

VOL 8 OF 11

No. 74851

**PATRICK HENRY MURPHY, JR.**

APPELLANT

**CAPITAL MURDER**

OFFENSE

**DEATH**

PUNISHMENT

**DALLAS**

COUNTY

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74851

VOLUME 41 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

\*\*\*\*\*

JURY TRIAL

\*\*\*\*\*

**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

On the 10th day of November, 2003, afternoon session,  
the following proceedings came on to be heard in the  
above-entitled and numbered cause before the Honorable  
Vickers L. Cunningham, Sr., Judge Presiding, held in Dallas,  
Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

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P R O C E E D I N G S

THE COURT: Thank you. You may be seated.

Sorry there was a delay in getting lunch in this afternoon and that's why we're a little bit late getting started. It took about fifteen minutes to get everything sorted out, but we'll try to be better tomorrow.

Mr. Sanchez, I believe you had a few questions for Detective Johnson.

MR. SANCHEZ: Yes.

THE COURT: You may inquire.

CROSS-EXAMINATION

BY MR. SANCHEZ:

Q. Detective, based on your testimony you have told us that you were the lead investigator on this case?

A. Co-lead.

Q. Who was the other leader?

A. Jeff Spivey.

Q. Jeff Spivey. And both of you went out to Colorado when you heard that these people might be out there; is that correct?

A. That's correct.

Q. When you got there, had Rivas and the other two been arrested before you got there or when you got there, do you know?

A. Before we got there.



1 Q. Before you got there?

2 A. Yes, sir.

3 Q. And at some point you were staying at the  
4 Holiday Inn and you were informed by somebody that Mr.  
5 Murphy and another person were in a Holiday Inn across the  
6 street; is that correct?

7 A. We weren't staying at the Holiday Inn. The  
8 other two were found in the Holiday Inn across the street,  
9 yes, sir.

10 Q. Do you recall about what the weather was like  
11 around that time?

12 A. It was cold, drizzly, and raining sometimes.

13 Q. And you have indicated that you were not  
14 involved in the negotiations for a peaceful surrender; is  
15 that correct?

16 A. That's correct.

17 Q. At what point did you take over speaking to  
18 Mr. Murphy? Was it before you got in the vehicle? At the  
19 time of surrender? What point did you take over?

20 A. My first contact was with a -- when we went to  
21 Colorado Springs Police Department after he was arrested and  
22 brought up there for us.

23 Q. Okay. But were you present when Mr. Murphy  
24 was finally -- when he finally came out of the Holiday Inn?

25 A. No, sir.

1 Q. So you had heard somebody -- somebody told  
2 you, basically, that -- go on over to the Police Department;  
3 is that correct?

4 A. Correct.

5 Q. Do you recall whether he was wearing a shirt  
6 or not when --

7 A. No, sir, I don't recall.

8 Q. Was it possible he wasn't wearing a shirt?

9 A. I don't recall what he was wearing, no, sir.

10 Q. Would that be something that you would  
11 remember?

12 A. I don't remember, no.

13 Q. And it's safe to say, then, that Mr. Murphy  
14 had not slept during the negotiations? Would it be safe to  
15 say that?

16 A. I wasn't in the room, so I don't know what he  
17 was doing in the room.

18 Q. Conversations were had between him and the  
19 police --

20 A. Yes, sir.

21 Q. -- and the negotiating people --

22 A. Yes, sir.

23 Q. -- for a peaceful surrender?

24 A. Yes, sir.

25 Q. And you started interviewing him around 4:00

1 in the morning?

2 A. A little after 4:00, yes, sir.

3 Q. And it took you almost four hours to take down  
4 his statement, correct?

5 A. Somewhere in that neighborhood, yes, sir.

6 Q. During the time when you were with him, he  
7 didn't sleep anywhere, did he?

8 A. Not with me, no, sir.

9 Q. So he was up all night, basically, dealing  
10 with you and the rest of the police; is that correct?

11 A. Yes, sir.

12 Q. When you took his statement down, the witness  
13 who signed as a witness on this statement, were they in the  
14 room during any portion of the interview?

15 A. No, sir.

16 Q. So the whole time you are interviewing Mr.  
17 Murphy, it's you, Mr. Murphy, and another person?

18 A. My lieutenant at the time.

19 Q. And the person that served as a witness, is  
20 that a civilian person or is that another police officer?

21 A. Civilian.

22 Q. Sometimes it's a clerk or something like that  
23 that works out of the police department?

24 A. Usually it's within the police department,  
25 yes, sir.

1 Q. And is this witness in the room when the  
2 statement is read back to Mr. Murphy?

3 A. The statement was not read to Mr. Murphy. He  
4 read it himself.

5 Q. Was this person in the room when you handed  
6 him the statement to read it?

7 A. No, sir.

8 Q. So, basically, the witness just comes in at  
9 the very end and watches him sign a piece of paper?

10 A. Witnesses his signature, yes, sir.

11 Q. Now, do you have a copy of the statement there  
12 in front of you?

13 A. No, sir.

14 MR. SANCHEZ: May I approach the witness,  
15 Your Honor?

16 THE COURT: You may.

17 Q. (By Mr. Sanchez) Let me show you a copy of  
18 the statement, I believe was read to the jury already. And  
19 I've numbered these pages here just for my own benefit. I'm  
20 sure those numbers weren't on there when it was signed,  
21 correct?

22 A. That's correct.

23 Q. I call your attention to page No. 5. These  
24 words here were words that he told you; is that correct?

25 A. That's correct.

1           A.       In other words, when he used the words  
2 "abort", when he used the words "leave, leave", those are  
3 his own words?

4           A.       That's correct.

5           Q.       You in no way told him what to say?

6           A.       No, sir.

7           Q.       You didn't intimate what would be a good way  
8 to write this or anything in that way?

9           A.       I don't understand your question, I'm sorry.

10          Q.       You in no way told him what would sound good  
11 or what wouldn't sound good. You just let him tell you and  
12 you write it?

13          A.       Tell the story the way he wanted to tell it.

14          Q.       Also, while you were waiting for Mr. Murphy to  
15 be transported to the jail, at some point did you make any  
16 indication that you thought he had illusions of grandeur?

17          A.       No, sir.

18          Q.       Did you ever write anything in your  
19 investigative notes that would indicate that you thought he  
20 had illusions of grandeur?

21          A.       I don't recall that, no, sir.

22                   MR. SANCHEZ: May I approach the witness,  
23 Your Honor?

24                   THE COURT: You may.

25          Q.       (By Mr. Sanchez) Specifically, Detective, is

1 that your writing there?

2 A. No, sir.

3 Q. That's not your writing?

4 A. No, sir, it's not.

5 Q. Do you know who made these notes?

6 A. It looks like Sergeant Spivey's writing.

7 Q. Did you make any notes yourself as you were  
8 preparing to talk to Mr. Murphy?

9 A. Yes, sir.

10 Q. Okay. And you would have those with you if we  
11 need to see those?

12 A. No, sir. I gave everything to the DA's  
13 Office.

14 Q. So Detective Spivey is the one that actually  
15 wrote these documents here?

16 A. That looks like his handwriting.

17 MR. SANCHEZ: I pass the witness, Your  
18 Honor.

19 REDIRECT EXAMINATION

20 BY MR. SHOOK:

21 Q. Detective Johnson, did Mr. Murphy appear alert  
22 during your interview with him?

23 A. Yes, he did.

24 Q. Did he appear alert the entire time that he  
25 dictated the statement to you?

1 A. Yes, he did.

2 Q. He didn't doze off or fall asleep or anything  
3 like that?

4 A. No, sir.

5 Q. You, yourself, had been up for quite some  
6 time; is that right?

7 A. That's correct.

8 Q. You didn't have any problem with staying  
9 awake?

10 A. No, sir.

11 Q. Let me turn your attention back to the actual  
12 crime scene. Looking at this photograph, which has been  
13 marked State Exhibit 55, shows the back area of the  
14 Oshman's. There's, you see the car lot that's located  
15 there?

16 A. Yes, sir.

17 Q. Was there a security camera on, on a portion  
18 of that car lot?

19 A. Yes, sir.

20 Q. Were y'all able to secure a videotape from one  
21 of those cameras?

22 A. Yes, sir.

23 Q. And was that tape turned over to Officer  
24 Hazard, the physical evidence officer?

25 A. It was placed in the property room for them,

1 yes, sir.

2 Q. You actually got it from the car lot folks and  
3 placed it in the property room for him?

4 A. Yes, sir.

5 Q. Now, back on, I believe it was February 27th  
6 of 2001, did Mr. Murphy -- had he come back here to the  
7 State of Texas?

8 A. Yes, sir.

9 Q. On that date did you take a buccal swab from  
10 him pursuant to a warrant?

11 A. Yes, sir.

12 Q. Would you tell the jury what a buccal swab is?

13 A. A buccal swab is basically our way of getting  
14 a DNA sample from a suspect without drawing blood. It is  
15 two sterile Q-Tips that are in a package. I tear them open  
16 in front of the defendant or the suspect, have him pull out  
17 both of those two cotton swabs, put one on each side of the  
18 mouth, rub the inside of his mouth on the sides, and then  
19 place it into a box. That box is then sealed up, placed  
20 into an envelope, and that is sealed up, and then it's sent  
21 to the lab.

22 Q. And you did that with Mr. Murphy; is that  
23 right?

24 A. Yes, sir.

25 Q. And what lab did you send that to?



1           A.       The Southwestern Institute of Forensic  
2 Sciences.

3           Q.       That's located here in Dallas County?

4           A.       Yes, sir.

5           Q.       And were buccal swabs taken of the other six  
6 suspects, as well?

7           A.       The other five.

8           Q.       The other five?

9           A.       Yes, sir.

10          Q.       Once they arrived?

11          A.       Yes, sir.

12          Q.       Okay. Now, looking at the voluntary  
13 statement, I think it's on page 5 here. I want to clear one  
14 matter up. About on the fourth line down, I wrote, "I gave  
15 precious location of the patrol and the direction he was  
16 traveling." The word "precious", upon reflection, was that  
17 the actual word used?

18          A.       No, sir.

19          Q.       What was the actual word used?

20          A.       "Precise."

21          Q.       "Precise." Okay. So it should read, "precise  
22 location"?

23          A.       Yes, sir.

24          Q.       All right.

25                   MR. SHOOK: That's all we have, Judge.

1 MR. SANCHEZ: We have nothing further,  
2 Your Honor.

3 THE COURT: Thank you, Detective.

4 MR. SHOOK: Call Misty Simpson.

5 MISTY WRIGHT SIMPSON,  
6 having been duly sworn, was examined and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. SHOOK:

10 Q. Would you tell us your name, please.

11 A. Misty Simpson.

12 Q. And Ms. Simpson, how are you employed?

13 A. I work at Capital One.

14 Q. How long have you worked with them?

15 A. Four years.

16 Q. And are you married?

17 A. Yes.

18 Q. Married to Michael Simpson?

19 A. Yes.

20 Q. And where does your husband work?

21 A. He works at Oshman's.

22 Q. Do you have any children?

23 A. Yes, we do.

24 Q. How many children do you have?

25 A. Two.

1 Q. What are their ages?

2 A. Fixing to be three and four months.

3 Q. Let me turn your attention back to December  
4 24th of 2000 and ask you if your husband Michael Simpson was  
5 working at the Oshman's at that time?

6 A. Yes, he did.

7 Q. How long has he been working there at the  
8 Oshman's?

9 A. About five years.

10 Q. Did you work there one time yourself?

11 A. Yes, I did.

12 Q. Is that where you met?

13 A. No.

14 Q. How long did you work at the Oshman's?

15 A. For about five months.

16 Q. Back on this date, though, you weren't working  
17 at the Oshman's?

18 A. No.

19 Q. And what was your physical condition back on  
20 Christmas Eve 2000?

21 A. I was nine months pregnant.

22 Q. Coming up very close to your due date?

23 A. Yes.

24 Q. And did you go to the Oshman's that day?

25 A. Yes, I did.

1 Q. And what was your reason for going to the  
2 Oshman's?

3 A. To pick Michael up.

4 Q. I'm sorry?

5 A. To pick Michael up.

6 Q. What time was he scheduled to get off work  
7 that evening?

8 A. 6:00.

9 Q. And what time did you arrive at the Oshman's?

10 A. About 5:45.

11 Q. What type of vehicle were you in?

12 A. Jeep Cherokee.

13 Q. Once you got to the Oshman's, where did you  
14 park your car?

15 A. In front of the exit doors.

16 Q. Now, were you even supposed to be out driving  
17 the car that day?

18 A. No.

19 Q. Why was that?

20 A. Because I had hydronephrosis. I had high  
21 blood pressure.

22 Q. Doctor's orders you were supposed to stay  
23 home?

24 A. Correct.

25 Q. How was Michael going to get home that day?

1 A. If I didn't pick him up, no way.

2 Q. So you went out against doctor's orders to  
3 pick him up?

4 A. Correct.

5 Q. You say you got there about, what, ten to  
6 6:00?

7 A. Ten to fifteen minutes before 6:00.

8 Q. Did you have a conversation with -- at that  
9 time he was your fiance; is that right?

10 A. Correct.

11 Q. Did you have a conversation with him at that  
12 time?

13 A. Yes.

14 Q. What did you talk to him about?

15 A. That they were going to be getting out right  
16 at 6:00. They weren't going to really close the store that  
17 evening.

18 Q. So did you stay at the location at that time?

19 A. Yes.

20 Q. Did you move the car at all at that point?

21 A. At that point, no.

22 Q. I want to show you what has been marked as  
23 State Exhibit 10. Looking on the monitor, does that show  
24 the front of the Oshman's?

25 A. Yes.

1 Q. And I'm going to try to get a little closer  
2 view of the front. The exit and entrance doors are located  
3 right here; is that right?

4 A. Correct.

5 Q. Where were you parked at the time you spoke  
6 with your fiancée?

7 A. In the handicapped spot right in front of the  
8 exit door.

9 Q. On this side?

10 A. To the left.

11 Q. Over here?

12 A. Yes.

13 Q. Okay. After he went back inside the building,  
14 did he come out at 6:00 as you had thought he was?

15 A. No.

16 Q. What did you do when he didn't come out right  
17 at 6:00?

18 A. I was wondering why he wasn't coming out at  
19 6:00. And at that point then I moved my vehicle to the  
20 entrance doors.

21 Q. Is that on the other side over here?

22 A. Correct.

23 Q. So you reparked your car right here?

24 A. Correct.

25 Q. What was the purpose in doing that?

1           A.       Just because I wanted to get out of the  
2 handicapped spot.

3           Q.       Now when you parked at this new location, were  
4 you able to look through the doors and see the front part of  
5 the store?

6           A.       Yes.

7           Q.       Could you see the counter, the cash registers,  
8 that area?

9           A.       Yes.

10          Q.       What did you see when you looked in there?

11          A.       All of the employees came up to the front by  
12 the registers.

13          Q.       Okay. What's the next thing you saw them do?

14          A.       Then I saw the employees get patted down.

15          Q.       When you say patted down, like somebody was  
16 searching them?

17          A.       Yes.

18          Q.       When you saw the employees being searched,  
19 what did you think?

20          A.       I thought it was kind of different, but I  
21 thought maybe just because of the Christmas holiday they  
22 were making sure nobody was stealing anything.

23          Q.       What is the next thing that you saw?

24          A.       Then they all went out -- actually, out of my  
25 sight. They went to the customer service area and I

1 couldn't see them.

2 Q. Did that cause you some concern at that point?

3 A. Yes.

4 Q. Why was that?

5 A. Because it just didn't seem normal. I thought  
6 he was coming out right at 6:00.

7 Q. So what did you do then?

8 A. I sat there and just waited for a little bit  
9 and then I saw them go to the back of the store in single  
10 file.

11 Q. You saw the employees go to the back of the  
12 store?

13 A. Correct.

14 Q. And they were marching in a single file?

15 A. Correct.

16 Q. Did that seem strange to you?

17 A. Yes.

18 Q. Did you see any other people in there that you  
19 didn't know?

20 A. Yes.

21 Q. Who was that?

22 A. That would be the people that robbed the  
23 store. I don't know who they were.

24 Q. What did they look like at that time? What  
25 were they doing?



1           A.       They were the ones that patted them down and  
2 then they were just marching them back to the back of the  
3 store.

4           Q.       Did you become concerned for your fiance's  
5 safety at that point?

6           A.       Yes.

7           Q.       Did you call the police at that time?

8           A.       No.

9           Q.       What did you do?

10          A.       I then went to K-Mart and called my friend,  
11 Sheila, to come up there.

12          Q.       Is K-Mart located kind of over on this side of  
13 the Oshman's in this group of stores?

14          A.       Yes.

15          Q.       You drove over there and did you use a pay  
16 phone?

17          A.       Yes.

18          Q.       And what did you ask Sheila to do?

19          A.       I asked her to come up there just to make sure  
20 that I was seeing things correctly.

21          Q.       Why were you worried that you weren't seeing  
22 things correctly?

23          A.       I didn't really want it to be happening, but I  
24 just wanted to make sure I wasn't crazy.

25          Q.       Okay. And did your friend, Sheila, agree to

1 do that?

2 A. Yes, she did.

3 Q. After you talked to her, where did you go  
4 then?

5 A. I went back between the Staples and the  
6 Oshman's and parked and waited for her to arrive.

7 Q. Did you park on the front row again or were  
8 you parked --

9 A. No, not right next to the building. In that  
10 area.

11 Q. Somewhere in here?

12 A. Yes.

13 Q. How long did it take her to arrive?

14 A. It took about five minutes.

15 Q. When she arrived at the location, what did she  
16 do?

17 A. She parked her car and then got into mine.

18 Q. Once she got in the car, did you explain to  
19 her what was going on?

20 A. Yes.

21 Q. Did you -- were you able to look in and see  
22 anything else going on inside the store?

23 A. Not inside the store, no.

24 Q. Did someone eventually come out of the store?

25 A. Yes, they did.

1 Q. And what did that person look like?

2 A. I don't really remember any facial. I just  
3 remember a black hat and black shoes mainly.

4 Q. Were they wearing a coat?

5 A. Yes. There was like a black security-type  
6 jacket.

7 Q. Okay. Was it a man?

8 A. Yes.

9 Q. When he emerged from the store, where did he  
10 go to?

11 A. He went to a white vehicle and spoke with the  
12 person in that vehicle.

13 Q. After he spoke with them, what did he do?

14 A. He started to walk toward a white Explorer.

15 Q. The white Explorer, did you know whose car  
16 that was?

17 A. No. I didn't know whose car that was at that  
18 time.

19 Q. When he started walking toward the white  
20 Explorer, did anything turn his attention to your car?

21 A. Yes.

22 Q. What was that?

23 A. Sheila sounded her alarm in her car.

24 Q. Did she do that on purpose?

25 A. She was just locking it.

1 Q. So the car made a noise when she locked it up?

2 A. Correct.

3 Q. When that occurred what did this person that  
4 you describe as kind of a security guard do?

5 A. He started to walk towards my vehicle.

6 Q. Okay. When you saw him walking towards your  
7 vehicle, what did you do?

8 A. I drove off.

9 Q. Were you frightened of him?

10 A. Yes.

11 Q. As you drove off, which direction did you go?

12 A. I drove out towards the freeway, which was to  
13 the right.

14 Q. Okay. This direction?

15 A. Yes.

16 Q. Once you did that, did you and your friend get  
17 on a cell phone?

18 A. Yes.

19 Q. Did your friend, Sheila, had she brought a  
20 cell phone with her?

21 A. Yes, she did.

22 Q. Did you call 911?

23 A. Yes, she did.

24 Q. Did you relate with the 911 operator what you  
25 had seen at the Oshman's?

1 A. Yes.

2 Q. Where did you park your car at that time?

3 A. We went out of the parking lot and then came  
4 back by the restaurant Good Eats.

5 Q. Is Good Eats Restaurant what we see right  
6 here?

7 A. Yes.

8 Q. And where did you park near the Good Eats?

9 A. At the back left corner.

10 Q. In this area?

11 A. Yes.

12 Q. What did you do once you parked there?

13 A. We sat there and just waited for the police.

14 Q. Now, did you see this man that had been  
15 walking toward you when you drove away, where did he go to?

16 A. He went to the back of Oshman's.

17 Q. Okay. Did he get into that white Explorer?

18 A. Yes, he did.

19 Q. And which direction did he go to get to the  
20 back of the Oshman's?

21 A. He went to the left, the opposite direction  
22 that we drove, and then turned right to go to the back.

23 Q. Okay. So this direction?

24 A. Correct.

25 Q. And then turned right here?

1 A. Correct.

2 Q. Did you report all that information to the 911  
3 operator?

4 A. Yes, we did.

5 Q. The man in the white Explorer, driving to the  
6 back?

7 A. Correct.

8 Q. What's the next thing that occurred once you  
9 were sitting outside the Good Eats?

10 A. Actually, we just sat there and waited for the  
11 police to come. We didn't do anything else until they took  
12 us to the back of Oshman's.

13 Q. Did some officers come and take you to the  
14 back of Oshman's eventually?

15 A. Yes.

16 Q. After that time did they eventually take you  
17 down to the Irving Police Station?

18 A. Yes, they did.

19 Q. What was their purpose in doing that?

20 A. Just to give them a statement of what we saw.

21 Q. Did you come to find out that your fiance was  
22 actually inside the Oshman's?

23 A. Yes.

24 Q. For a long time inside there while the police  
25 were waiting to try to get them out?

1 A. Yes, he was.

2 Q. When is the first time you were able to see  
3 him?

4 A. I didn't see him until probably about 10:00.

5 Q. 10:00 that evening?

6 A. Correct.

7 Q. What was your physical and mental condition at  
8 that time?

9 A. I was very shaken at that time. They even had  
10 to call the paramedics for me.

11 Q. What did the paramedics want to do?

12 A. They wanted to take me to the hospital.

13 Q. Did you agree to do that?

14 A. No.

15 Q. Why was that?

16 A. Because I didn't want to have my daughter that  
17 day.

18 Q. And when was your daughter born?

19 A. She was born on December 26, 2000.

20 MR. SHOOK: We'll pass the witness.

21 CROSS-EXAMINATION

22 BY MR. SANCHEZ:

23 Q. Ma'am, you said that you saw somebody come out  
24 in a black hat, get into the Explorer, and drive it away  
25 from the front entrance; is that correct?

1 A. That is correct.

2 Q. And you could see which direction they were  
3 going in, correct?

4 A. Correct.

5 Q. And you saw it turn the corner?

6 A. Correct.

7 Q. And in your mind you felt they were going to  
8 the back of the store, going somewhere back there; is that  
9 correct?

10 A. Correct.

11 Q. From the time you saw that happen to when you  
12 saw the police arrive, do you recall how long that took?

13 A. Maybe five minutes. I really don't know.

14 Q. Okay. So give or take a minute, five minutes  
15 after you saw the Explorer go to the back of the store, did  
16 you see a police officer arrive?

17 A. We saw them go through the parking lot in  
18 front of K-Mart, yes.

19 MR. SANCHEZ: We pass the witness, Your  
20 Honor.

21 REDIRECT EXAMINATION

22 BY MR. SHOOK:

23 Q. Ms. Simpson, you don't know -- of the police  
24 cars you saw, you don't know if Officer Hawkins' car was one  
25 of those, do you?



1 A. No.

2 Q. You were parked on the other side of that Good  
3 Eats?

4 A. Correct.

5 Q. You didn't have a view of the front of  
6 Oshman's at that point in time, did you?

7 A. We weren't really looking at the front of the  
8 Oshman's. We could have seen it, if we had been looking,  
9 but we weren't.

10 MR. SHOOK: That's all we have.

11 MR. SANCHEZ: I have nothing further,  
12 Your Honor.

13 THE COURT: Thank you, Ms. Simpson. You  
14 may step down.

15 MR. SHOOK: May this witness be excused?

16 MR. SANCHEZ: We have no objection, Your  
17 Honor.

18 THE COURT: She may.

19 MR. SHOOK: Call Michael Simpson.

20 MICHAEL SIMPSON,  
21 having been duly sworn, was examined and testified as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. SHOOK:

25 Q. Would you tell us your name, please.

1 A. My name is Michael Simpson.

2 Q. And how old are you, sir?

3 A. I'm 28 years old.

4 Q. And how are you employed?

5 A. I'm employed with Oshman's.

6 Q. How long have you been with Oshman's?

7 A. I've been at Oshman's for about five years  
8 now.

9 Q. And what do you do with them?

10 A. I'm a department manager in the athletics  
11 department.

12 Q. Are you married and have a family?

13 A. Yes, I do.

14 Q. Your wife that just testified previously?

15 A. Yes, sir.

16 Q. And you have two children?

17 A. Two children.

18 Q. Let me turn your attention back to Christmas  
19 Eve of 2000. Were you working that day at Oshman's?

20 A. Yes, I was.

21 Q. Do you recall what time you arrived at work?

22 A. I got there roughly around 10:00.

23 Q. Okay. What part of the store were you  
24 assigned to that today?

25 A. That day I was assigned to the athletics

1 department.

2 Q. Was it a pretty busy day for shoppers that  
3 day?

4 A. Christmas Eve, it was pretty busy.

5 Q. What time were you scheduled to get off work?

6 A. I was scheduled to get off work at 6:00.

7 Q. Was your fiancée, Misty, going to come pick  
8 you up that day?

9 A. Yes, she was.

10 Q. What time did she arrive?

11 A. She arrived about fifteen, ten or fifteen  
12 minutes before we were supposed to get out of there at 6:00.

13 Q. Did you go outside and talk with her at that  
14 time?

15 A. About five minutes before I was scheduled to  
16 get off, I went outside and talked to her and I told her I  
17 would be out in about five minutes.

18 Q. You expected to come out right at 6:00?

19 A. Right at 6:00.

20 Q. Once you spoke with her, what did you do then?

21 A. I proceeded to go back inside, walk around the  
22 athletics department.

23 Q. Were there shoppers still in the Oshman's at  
24 that time?

25 A. Yes, there were.

1 Q. What location do you recall the shoppers being  
2 in?

3 A. I recall some shoppers in the clothing  
4 department, the athletics department, and the HFC  
5 department.

6 Q. Did you actually have any interaction with  
7 them at that time?

8 A. No, sir, I did not.

9 Q. After you went back to that athletic  
10 department, where did you go then?

11 A. After I left the athletic department, I just  
12 continued to walk around the entire store. I went around  
13 the clothing department and went around the shoe department.

14 Q. Okay. Now, looking at that exhibit off to  
15 your shoulder there, State Exhibit 44, do you see any of the  
16 men that you thought were shoppers at that time?

17 A. Um, at the current time, I believe this  
18 gentleman right here, I thought he was a shopper. That's  
19 the only one that I really recognize.

20 Q. Where do you remember seeing Michael  
21 Rodriguez?

22 A. I remember see Mr. Rodriguez in the clothing  
23 department.

24 Q. After the store closed or right when it  
25 closed, did you go to the front of the store?

1 A. Yes, I did.

2 Q. And were the other employees gathering up at  
3 that time?

4 A. Yes, they were.

5 Q. What area of the store were you gathered up  
6 at?

7 A. We were gathered up at the customer service.

8 Q. Okay. What was going on there at the customer  
9 service station?

10 A. A gentleman who was disguised in an ADT  
11 security outfit had asked some of the employees to check out  
12 a photo lineup for the simple fact that we thought that one  
13 of our employees had their car broken into the other day,  
14 the day before, so we thought that they were coming in to  
15 just get a photo lineup and see if we recognized any of the  
16 photos.

17 Q. That's what you thought they were there for?

18 A. That's what I thought they were there for.

19 Q. Did you actually talk to any what you thought  
20 were the security guards at that time?

21 A. I believe I talked to one. I talked to George  
22 Rivas.

23 Q. All right. Once everyone was there looking at  
24 the photographs, did George Rivas eventually take out a gun?

25 A. Yes, he did.

1 Q. When did he do that?

2 A. Once he had all the employees gathered up at  
3 the front, he stood at the front of customer service and  
4 held up a gun and said that this was a robbery.

5 Q. Okay. How close were you to him when he said  
6 that?

7 A. I was about one register away from him when he  
8 actually said the announcement.

9 Q. Did he hold the gun up in the air at that  
10 time?

11 A. Yes, he did.

12 Q. When you saw the gun in the air and he made  
13 that statement, what did you do?

14 A. My first initial reaction was I took one step  
15 back. But at that time somebody pointed a gun in my back.

16 Q. Okay. So out of reaction you stepped  
17 backwards?

18 A. I stepped backwards.

19 Q. And then you had a gun in your back?

20 A. Yes, I did.

21 Q. Was the gun physically in your back?

22 A. Not physically in my back. It was just, once  
23 I stepped back, he just jabbed me with it real quick to let  
24 me know it was a gun.

25 Q. Poked you with a gun?

1 A. Yes.

2 Q. Any doubt in your mind it was a real gun?

3 A. There was no doubt in my mind that it was a  
4 real gun.

5 Q. Was this one of the men that just a few  
6 moments before you thought was one of the shoppers?

7 A. Yes.

8 Q. Once you had that gun poked in your back, what  
9 did you do?

10 A. Once I had the gun pointed in my back, I  
11 listened to everything that he said and just everything that  
12 they told me to do, I did.

13 Q. Were you scared at that point in time?

14 A. Yes, I was.

15 Q. What did they have the employees do then?

16 A. Once they had all the employees gathered up at  
17 customer service, we all rounded up at the front, very front  
18 counter. They made us put our hands on the front  
19 countertops and they began to frisk us.

20 Q. And were all the employees in the store, 16 or  
21 17, gathered up in that one little area?

22 A. Yes.

23 Q. At some point in time do you remember if  
24 another employee came up there?

25 A. I believe it was a female employee of ours.

1 She was, I believe, at the time in the very back.

2 Q. What else do you remember Mr. Rivas saying  
3 while you were up at the counter?

4 A. I remember he distinctly told the manager at  
5 the time, Wes Ferris, not to try anything funny because he  
6 told him that he had that look about him, that he might try  
7 something. So George Rivas told him not to try anything  
8 funny, otherwise he would have to shoot him, and if he had  
9 to shoot one person, he would have to shoot all of us.

10 Q. Did you take those threats seriously?

11 A. Yes, I did.

12 Q. Did he tell you that the other men in the  
13 store were with him?

14 A. At the time he did, yes.

15 Q. Okay. Did he mention anything about  
16 individuals outside the store?

17 A. I didn't hear anything about individuals  
18 outside the store.

19 Q. Okay. Now, did one of the men ask you whether  
20 your fiancée was there or if anyone was there to pick anyone  
21 up?

22 A. There was a gentleman standing by the very  
23 front doors, by the front exit doors. He asked if anybody  
24 had anybody coming to pick us up. I told him at the time  
25 that I had my girlfriend picking me up.



1 Q. Once you said that, did you get a little  
2 worried?

3 A. I got a little worried because I didn't know  
4 if they did have somebody outside. I didn't know if the  
5 people that were inside were going to go outside and get her  
6 to bring her inside and take her hostage.

7 Q. What was her physical condition at that time?

8 A. At the time she was nine months pregnant and  
9 she was really supposed to be on bed rest. She wasn't even  
10 supposed to be out of the house.

11 Q. After you were searched, were you then taken  
12 to the back of the store?

13 A. Yes. We were led single file from customer  
14 service to the back in the breakroom.

15 Q. Where were you in the line of employees?

16 A. I was toward the end of the line.

17 Q. Did you stop at any time as you were making  
18 your way back to the breakroom?

19 A. We stopped by the bag counters. There we  
20 noticed one of our managers, Darrin Ojeda, he was sitting on  
21 the floor with his shirt taken off.

22 Q. They were taking his Oshman's shirt off?

23 A. They had already taken his shirt off.

24 Q. After that did you go into the breakroom?

25 A. Yes, we did.

1 Q. Once they put you in the breakroom, what did  
2 they tell you to do?

3 A. They had us put our hands on the wall and lean  
4 our heads forward and they began to frisk us once again.

5 Q. At any point in time do you remember Wes  
6 Ferris leaving with George Rivas?

7 A. Yes, he did.

8 Q. Was that when you first went into the  
9 breakroom?

10 A. That's when we first went into the breakroom.

11 Q. After they left how many robbers were left in  
12 that room, if you can tell?

13 A. At the time it sounded like three or four.

14 Q. You said that they started searching everyone?

15 A. Yes.

16 Q. Frisking everyone? Were threats made to you  
17 back there?

18 A. Yes, they were.

19 Q. What types of threats were made?

20 A. If we didn't cooperate that they would have to  
21 shoot us. We had some female employees that were crying at  
22 the time. They told them to shut up, otherwise they would  
23 have to hurt them.

24 Q. So some of the females were crying and they  
25 were told to shut up?

1 A. Yes.

2 Q. Did you hear anyone getting roughed up back  
3 there?

4 A. I heard one of our employees thrown up against  
5 the locker.

6 Q. Were any comments made about the types of  
7 watches or rings or jewelry that was being taken from the  
8 employees?

9 A. Um, the suspects, the robbers, they seemed  
10 very frustrated with the amount of money that we had, the  
11 type of jewelry that we had. They were just disappointed,  
12 it seemed like, because we didn't have what they were  
13 expecting.

14 Q. Did they make comments about that?

15 A. They said something to the effect, damn,  
16 people, don't you have anything better than this?

17 Q. Okay. At some point in time did Wes Ferris  
18 come back into the breakroom?

19 A. Yes, he did.

20 Q. Did you hear any communication over a radio  
21 after that time?

22 A. Yes, I did.

23 Q. What types of things did you hear?

24 A. Types of things I heard was, "How are we  
25 doing? Are we all clear? How much time do we have?"

1 Things of that nature.

2 Q. All right. After Wes Ferris came back to the  
3 breakroom, did you hear anything -- did you hear anything  
4 about on the radio transmissions about having to leave  
5 quickly?

6 A. Um, at one point in time I heard a radio  
7 transmission saying, "Come on, we got to go. We got to go.  
8 We got company."

9 Q. "We got to go, we got to go, we got company?"

10 A. Yes.

11 Q. Did the men in the back room leave quickly  
12 after that?

13 A. Yes, they did.

14 Q. Could you hear them as they went out the door?

15 A. Yes. They were in a hurry. They pretty much  
16 grabbed all their belongings that they had off the table and  
17 just ran out the door.

18 Q. After they left the building, what's the next  
19 thing that you heard?

20 A. I heard gunshots.

21 Q. Could you describe the gunshots? When they  
22 started, how quickly were they or how far apart were they?

23 A. They were very quick, seemed like rapid fire,  
24 very back to back, kind of like a pow, pow, pow, pow, pow.

25 Q. One right after the other?

1 A. One right after the other.

2 Q. Were there any long pauses or did they more or  
3 less just follow one another?

4 A. They more or less just followed one another.

5 Q. Now, you didn't have a stopwatch on or you  
6 weren't timing this, right?

7 A. No.

8 Q. Do you know how long it was before the shots  
9 went off after they left?

10 A. I would say roughly about two minutes after  
11 they left.

12 Q. Again, that's an approximation?

13 A. That's an approximation.

14 Q. Do you know how many shots were fired out  
15 there?

16 A. At the time when I had so much going on in my  
17 head, I said there were about 50 or 60 shots, which I know  
18 wasn't possible, but that's what it sounded like to me when  
19 I first heard it.

20 Q. Sounded like a whole lot of gunshots to you?

21 A. Sounded like a lot of gunshots.

22 Q. One right after the other?

23 A. One right after the other.

24 Q. What was the demeanor of the other employees  
25 back there when these gunshots were going off?

1           A.       Um, a lot -- everybody was scared. Um,  
2           everybody was really distraught. They didn't know if the  
3           robbers were going to come back inside. They didn't know if  
4           they were going to come and shoot us or take us hostage. We  
5           didn't know what was going to go on.

6           Q.       Were you also worried about your fiancée and  
7           your unborn child?

8           A.       I was very worried about my fiancée. I  
9           already knew what situation I was in, my situation, but I  
10          had no clue on how she was doing, what her situation was.

11          Q.       Eventually, did Wes Ferris -- was he able to  
12          make it out of that room?

13          A.       Yes, he was.

14          Q.       And summoned the police there?

15          A.       Yes, he did.

16          Q.       When you made it out of the Oshman's, where  
17          were you taken to?

18          A.       Um, we were taken to the street directly  
19          behind Oshman's and we were stationed near a fire truck.

20          Q.       Were you eventually taken down to the Irving  
21          Police Department?

22          A.       Yes, we were.

23          Q.       And did you give a detective a statement  
24          there?

25          A.       Yes, I did.

1 Q. Now, did you actually see a photo lineup that  
2 night?

3 A. No, I did not.

4 Q. When were you reunited with Misty?

5 A. I would say about two or three hours after we  
6 got to the police station.

7 Q. What was her physical condition then?

8 A. Um, they had a medical team check her out. At  
9 the time she had high blood pressure, she had preeclampsia,  
10 which was a preconditioned, something with her pregnancy.

11 Q. Y'all decided not to go to the hospital that  
12 night?

13 A. No, we did not.

14 Q. And your baby girl was born on the 26th?

15 A. Yes, she was.

16 MR. SHOOK: We'll pass the witness.

17 CROSS-EXAMINATION

18 BY MR. SANCHEZ:

19 Q. Mr. Simpson, you testified that you heard a  
20 voice say, "We have got to go. We've got to go. We have  
21 company." Could you tell who that was?

22 A. I could not tell who that was.

23 Q. Could you keep track of any of the voices that  
24 you heard on those radio transmissions?

25 A. No, I did not.

1 MR. SANCHEZ: Pass the witness, Your  
2 Honor.

3 MR. SHOOK: That's all we have, Judge.

4 THE COURT: Thank you, Mr. Simpson.

5 MR. SHOOK: May this witness be excused?

6 MR. SANCHEZ: We have no objection, Your  
7 Honor.

8 THE COURT: He may.

9 MR. SHOOK: Call Marquis Washington.

10 MARQUIS WASHINGTON,  
11 having been duly sworn, was examined and testified as  
12 follows:

13 DIRECT EXAMINATION

14 BY MR. SHOOK:

15 Q. Would you tell us your name, please.

16 A. Marquis Washington.

17 Q. And how are you employed, sir?

18 A. I'm a self-employed graphic designer.

19 Q. Let me turn your attention back to Christmas  
20 Eve of 2000. Where were you working at that time?

21 A. I was employed with the advertising agency  
22 Brandy Catrell.

23 Q. Still doing graphic design, that sort of  
24 thing?

25 A. Yes, sir.



1 Q. Where were you living?

2 A. I was living off of Estrada in Irving, Texas.

3 Q. Is that in a house or apartment?

4 A. Apartment.

5 Q. Was that apartment complex located more or  
6 less behind a shopping center complex where an Oshman's is  
7 located?

8 A. Correct.

9 Q. Where is your apartment or where was it at  
10 that time in relation to the Oshman's?

11 A. It was west of the Oshman's across a field.

12 Q. Let me show you what has been marked as State  
13 Exhibits 65 and 66. Is that 65 an aerial view of the back  
14 of the Oshman's and your apartment complex?

15 A. Yes, it is.

16 Q. And is 66 a view of the Oshman's more or less  
17 from the viewpoint of your bedroom window?

18 A. Yes, it is.

19 Q. Okay.

20 MR. SHOOK: Your Honor, at this time  
21 we'll offer State Exhibits 65 and 66.

22 MR. SANCHEZ: No objection, Your Honor.

23 THE COURT: Nos. 65 and 66 shall be  
24 admitted.

25 Q. (By Mr. Shook) Mr. Washington, looking at the

1 monitor I believe these would be your apartments here at the  
2 front; is that right?

3 A. That's correct.

4 Q. And back at that time which apartment were you  
5 staying in?

6 A. I was staying in the last apartment in the  
7 complex, which would be where the pointer is now.

8 Q. All right. And then this is the back of the  
9 Oshman's located right here?

10 A. Correct.

11 Q. And what is this area here?

12 A. That's an open field.

13 Q. Okay. Now, back on December 24th, that  
14 evening, around 6:30, were you there at your apartment?

15 A. Yes, sir.

16 Q. What were you doing there at that time?

17 A. I was watching a bowl game or some type of  
18 football game.

19 Q. Were you there by yourself?

20 A. Yes, I was.

21 Q. Around 6:30 that evening did you hear anything  
22 outside your apartment that caught your attention?

23 A. I heard what I thought were gunshots.

24 Q. What direction did the gunshots come from?

25 A. They were coming from the field. They were

1 coming from the open field between the Oshman's and my  
2 apartment.

3 Q. And when you heard the gunshots, what was your  
4 first reaction?

5 A. To get to the floor because my windows face  
6 the field, which is looking east, so there was nothing  
7 really there to stop any bullets, if they were to come  
8 through.

9 Q. How many gunshots did you hear at that time?

10 A. I think it was five. I felt it was five shots  
11 coming.

12 Q. Did the gunshots come in quick succession?

13 A. Yes, they were.

14 Q. When you heard them, were they one right after  
15 the other?

16 A. Yes, they were.

17 Q. And that's when you got on the floor at that  
18 time?

19 A. Correct.

20 Q. What did you hear next?

21 A. About a second later I heard more gunshots. I  
22 think it was about seven. It was a volley of shots, so it  
23 was about seven. I wasn't actually counting all of them,  
24 but, yeah, it was a volley of shots.

25 Q. It was an estimation on your part was

1 about seven the second time you hear shots?

2 A. At least that. It was more than the first  
3 shots that were fired.

4 Q. It was just a brief pause, you said, of about  
5 a second between those?

6 A. Yes, sir, it was about a second.

7 Q. And as you heard that second volley of shots,  
8 what did you do then?

9 A. During that time I was already on the floor  
10 and I was crawling towards my room. And my room had a  
11 window. It has a window in it, but it has a window sill.  
12 So it had a little more protection than just an open patio  
13 window, because it was just a pane glass. So during those  
14 shots while they were being fired, I was already crawling  
15 towards my room.

16 Q. Once you got to your room or the window in  
17 your room, what did you do then?

18 A. I looked above the sill just to see out, to  
19 look out to see what was happening, if someone was actually  
20 in the field firing and which direction.

21 Q. Where was your attention drawn first when you  
22 looked out the window?

23 A. I looked to the south, which is to my right  
24 and actually gradually started looking towards the north,  
25 which would have been to my left towards the Oshman's.

1 Q. So you looked towards this area first?

2 A. No. I looked towards the south first, which  
3 is there, correct.

4 Q. And then looked this way?

5 A. And then up towards the Oshman's.

6 Q. Once you looked up toward the Oshman's, what  
7 did you see?

8 A. Right as I was looking south and gradually  
9 turning to the left, I heard another shot or two and then it  
10 brought my attention directly to the Oshman's loading dock,  
11 loading area.

12 Q. So you had already heard the first five shots  
13 and then a one-second pause, about seven more shots, and  
14 then as you looked out the window, you heard some more shots  
15 at that time?

16 A. Yes, sir.

17 Q. And that's when you saw some activity behind  
18 the Oshman's?

19 A. Exactly.

20 Q. What did you see going on behind the Oshman's?

21 A. When I first looked out, I saw what appeared  
22 to be about four guys just running around some of the  
23 trailers and a truck that was there.

24 Q. Okay. Let me show you State Exhibit 66. This  
25 is a photograph taken at nighttime kind of from what your

1 viewpoint would have been as you looked out your window; is  
2 that right?

3 A. That's right.

4 Q. Same kind of angle, that sort of thing?

5 A. Yes, sir.

6 Q. Now, a closer view, does that show the back  
7 area where there is a trailer here and trailer in this area?

8 A. Yes.

9 Q. Is this the area you looked at and saw some  
10 men running around?

11 A. That's it.

12 Q. The glare that we see in the photograph, is  
13 there that type of glare when you are actually viewing it in  
14 person?

15 A. No, it's not.

16 Q. We see a trailer here and a tree. What area  
17 did you see the men running around in?

18 A. Right there where the trailer is on the south  
19 and on the other side of the tree.

20 Q. Did you see any type of vehicle parked out  
21 there?

22 A. It was a white Ford Explorer parked there.

23 Q. Where was that located?

24 A. It was to the left of the truck, which is  
25 actually to the north of the truck, a few feet in front of

1 it.

2 Q. Somewhere in this area?

3 A. That's correct.

4 Q. All right. And where did you see the men?

5 A. They were around the truck, a couple on the  
6 other side of the Explorer and then there was one that I  
7 couldn't see his entire body, because he was on the other  
8 side of the trailer and I could just see his feet initially.

9 Q. This trailer here?

10 A. Correct.

11 Q. And all you could see was the lower part of  
12 his body?

13 A. Right.

14 Q. Okay. What direction did you see the men  
15 moving?

16 A. Initially, they were just all moving in  
17 several different patterns, but ultimately they moved off to  
18 the left and went north.

19 Q. Okay. So they moved this direction  
20 eventually?

21 A. Correct.

22 Q. Did they move out of your line of sight?

23 A. That's right.

24 Q. Now, there's some cars parked here. Is that  
25 at a parking lot where some used car lots?

1 A. It's a car lot, yes, sir.

2 Q. Did that block your view somewhat at that  
3 time?

4 A. It did.

5 Q. Did you ever see -- did the men ever return to  
6 your line of sight?

7 A. They did a few seconds later. And there were  
8 fewer guys that came back than what actually left. So it  
9 appeared that someone ran off and they didn't come back or  
10 whatever. But it was like three guys that left and only  
11 about two that came back.

12 Q. Okay. What did they do when they came back?

13 A. They got into the truck.

14 Q. Okay. The Explorer?

15 A. Into the Explorer, yes, I'm sorry.

16 Q. And what did they do then?

17 A. The truck slowly began to back up and the guy  
18 that was over the guy that did not run, he was still  
19 standing close to the trailer, he ended up getting into the  
20 truck finally. And then it backed up. It was still facing  
21 south as it, you know, as it reversed. But then it pulled  
22 off and went up the street.

23 Q. Okay. Let me show you State Exhibit 65 again.  
24 Could you see the direction that the car went?

25 A. Yes, it drove south.



1 Q. This direction here?

2 A. Correct.

3 Q. And then which way did it go at that time?

4 A. The street curves around and heads east, so  
5 they had no choice but to go east. And there's a stop light  
6 at Beltline and there I couldn't tell which direction they  
7 went.

8 Q. Curves around this area and then goes on up to  
9 Beltline?

10 A. That's right.

11 Q. Did you -- could you estimate how fast the  
12 Ford Explorer was going?

13 A. I would say about ten miles an hour.

14 Q. All right. Now, after you viewed that, did  
15 you ever have any contact with the police that evening?

16 A. Yes, sir.

17 Q. And what type of contact did you have with  
18 them?

19 A. Well, a few of them, when they got to the  
20 scene they were walking across the small creek that's there  
21 behind the apartments and I told them actually what I saw.  
22 And they instructed me to call the police department and  
23 report it and, basically, that's what I did.

24 Q. So you called a number there at the police  
25 department?

1 A. I called the direct line to the department,  
2 right.

3 Q. Did you go out later that evening?

4 A. I went to dinner right after that. I had a  
5 dinner date or appointment, whatever. And that was about  
6 maybe 30 minutes later, so I left.

7 Q. Okay. When you returned from your dinner  
8 date, did you go back by the Oshman's?

9 A. Yes, I did. That's when I spoke with the  
10 officers that were at the creek. They had informed me that  
11 one of their officers had been shot, so I inquired about him  
12 later that evening and the gentleman that I talked to at  
13 that point, he instructed me to go to the department and  
14 give a report.

15 Q. Did you do that then?

16 A. Yes, I did.

17 Q. In fact, on another occasion did you execute  
18 some drawings, some basic drawings, of what you had seen of  
19 the activity behind the Oshman's?

20 A. Yes, sir.

21 Q. And at whose request did you do that?

22 A. It was Detective Spivey.

23 Q. Let me show you what has been marked as State  
24 Exhibits 67 through 72. Are these copies of the drawings  
25 that you made for Detective Spivey?

1 A. Yes, they are.

2 Q. And the writing that's contained on them, is  
3 that your handwriting?

4 A. That is.

5 Q. Describing what you see in those drawings?

6 A. Uh-huh.

7 MR. SHOOK: Your Honor, at this time we  
8 offer State Exhibits 67 through 72.

9 MR. SANCHEZ: We have no objection, Your  
10 Honor.

11 THE COURT: Nos. 67 through 72 shall be  
12 admitted.

13 Q. (By Mr. Shook) Mr. Washington, these are more  
14 or less kind of rough sketches of what you saw, is that  
15 right?

16 A. Correct.

17 Q. When you do your regular work, you go into a  
18 lot more detail; is that right?

19 A. Yes, sir.

20 Q. The area we're seeing now, is the same area  
21 that we looked at on the photograph before?

22 A. That's right.

23 Q. The trailer that we saw on the photograph, is  
24 that represented here?

25 A. Correct.

1 Q. And are these the other trailers here?

2 A. They are.

3 Q. As you looked out your window, after hearing  
4 this series of shots and hearing more shots, what we're  
5 seeing in 67, is that the first view that you had of these  
6 men who were moving in the back of the Oshman's?

7 A. Yes, this is.

8 Q. And this is the Ford Explorer?

9 A. Yes.

10 Q. You mentioned one man who you could only see  
11 his legs; is that right?

12 A. Right.

13 Q. Is that what we see right here?

14 A. That's right.

15 Q. Okay. Then the next drawing, what does that  
16 depict?

17 A. That shows the men beginning to move north as  
18 they were going out of my sight.

19 Q. Okay. You lost sight of them for a few  
20 moments and then --

21 A. Correct.

22 Q. -- some of them came back?

23 A. Right.

24 Q. Then 69, does that show the men as they came  
25 back and as they began to get into the vehicle?

1 A. Yes.

2 Q. Okay. And then State Exhibit 70, what does  
3 that show us?

4 A. That shows the truck back up and began to  
5 drive south.

6 Q. Okay. And then State Exhibit 71, would be the  
7 vehicle as it began to drive down the Willow Creek  
8 Boulevard?

9 A. Correct.

10 Q. And State Exhibit 72, does that show the  
11 vehicle as it was turning?

12 A. As it appeared to be turning, yes. I never  
13 actually saw it turn onto the street, but it seemed as  
14 though it was about to turn.

15 Q. That was your last view of it then?

16 A. That was it.

17 Q. If you were to -- let me show you No. 51. If  
18 you were going to -- this is the street you finally saw the  
19 Ford Explorer come down; is that right?

20 A. Yes.

21 Q. If you were going to come over to your  
22 apartments, would you have to turn right and come down a  
23 street this way to get into the entranceway?

24 A. Correct. You would turn right on Beltline and  
25 then go up to Pioneer and take a right.

1 Q. And take a right into the apartment complex  
2 off Pioneer?

3 A. Correct.

4 MR. SHOOK: We'll pass the witness.

5 CROSS-EXAMINATION

6 BY MR. SANCHEZ:

7 Q. Mr. Washington, from looking at these drawings  
8 that you made, did you ever see a police car back there?

9 A. No, I didn't.

10 Q. The whole time -- this is from your memory.  
11 You saw at the most four men and no police car in front or  
12 behind that white Explorer?

13 A. No.

14 MR. SANCHEZ: I pass the witness.

15 REDIRECT EXAMINATION

16 BY MR. SHOOK:

17 Q. But all the gunshots that you heard out there,  
18 there was five and then a brief pause and then seven more.  
19 How many more did you hear after that?

20 A. Maybe about -- I'm going to say it was 25 over  
21 all, so probably about another 15.

22 Q. Okay. Were they all pretty much in rapid  
23 succession?

24 A. Yes, they were.

25 MR. SHOOK: That's all we have.

1 MR. SANCHEZ: I have nothing further,  
2 Your Honor.

3 THE COURT: Thank you, sir.

4 MR. SHOOK: May this witness be excused?

5 MR. SANCHEZ: No objection, Your Honor.

6 THE COURT: He may.

7 MR. SHOOK: May we approach the bench,  
8 Your Honor?

9 THE COURT: You may.

10 (Bench conference)

11 THE COURT: Members of the jury, we need  
12 to take a very quick break. If you would, go with the  
13 Sheriff.

14 [Jury out]

15 (Recess)

16 [Jury in]

17 THE COURT: Thank you. You may be  
18 seated. Mr. Shook, call your next witness.

19 MR. SHOOK: Call Officer Hazard.

20 STEVEN HAZARD,  
21 having been duly sworn, was examined and testified as  
22 follows:

23 DIRECT EXAMINATION

24 BY MR. SHOOK:

25 Q. Could you state your name, please.

1 A. It's Steven Hazard, H-A-Z-A-R-D.

2 Q. How are you employed, sir?

3 A. As a police officer for the City of Irving.

4 Q. And how long have you been with the City of  
5 Irving?

6 A. Twenty-five years.

7 Q. What division are you assigned?

8 A. I'm currently in the Crime Scene Search  
9 Section or Physical Evidence Section.

10 Q. How long have you been assigned to that  
11 division?

12 A. Right at 17 years.

13 Q. Do you have any particular -- let me ask you  
14 first, what are your duties in that division?

15 A. In that section we are the ones that deal with  
16 any physical evidence. We're the ones that take  
17 photographs, video wherever it's necessary, basically just  
18 seize any physical evidence.

19 Q. Okay. Do you have any special training,  
20 education, or schools you have attended that have helped you  
21 in collecting evidence?

22 A. Yes, sir, I have.

23 Q. What types of schools are those?

24 A. I've been to numerous schools. They've been  
25 put on by the FBI, the State of Texas, and by this county,



1 and some other areas. They all deal with various schools  
2 that deal with fingerprinting, photography, video, physical  
3 evidence, just blood spatter, basically anything that has to  
4 do with this type job.

5 Q. All right. Let me turn your attention to  
6 December 24th of 2000 and ask if you were called out to the  
7 Oshman's store located just off Highway 183?

8 A. Yes, sir, I was.

9 Q. What about what time did you arrive there?

10 A. Around 8:00.

11 Q. And what was going on at the scene when you  
12 arrived?

13 A. When I arrived, there was already a lot of  
14 officers out at the scene. The -- they had set up an area  
15 where they didn't let just anybody go up to the actual  
16 store. They had officers stopped at a certain area.

17 I went up to that area where we were  
18 stopped and we were kind of -- they had set up a perimeter.  
19 We were just outside of the perimeter of the store, because  
20 they were still searching the store.

21 Q. When you arrived at the location, were the  
22 store employees still inside?

23 A. Yes, sir.

24 Q. So the crime scene wasn't secured at that  
25 point in time as far as for collection of evidence?

1 A. Yes, sir.

2 Q. What is the first thing you do when you are  
3 beginning to process a crime scene?

4 A. I usually start with photographs, because at  
5 the same time I'm taking pictures of photographs, I can see  
6 how large of an extent I've got of a crime scene, kind of  
7 gives you an idea of it.

8 Q. Was there a decision made that evening to  
9 start processing the crime scene before all the employees  
10 were taken out?

11 A. Yes, sir.

12 Q. And what led to that decision?

13 A. It was basically two things. The -- first  
14 off, the fire department wanted to -- they needed one of  
15 their fire trucks. One of the fire trucks that had  
16 responded initially was still in the roadway right across  
17 from where this had occurred. They wanted that fire truck  
18 out of there, so they could use it.

19 We went down the roadway to check and  
20 make sure that if they moved that fire truck, that they  
21 wouldn't run over any evidence or destroy any evidence that  
22 might be in the roadway. At the same time I was doing  
23 photographs of that.

24 When we got down there we noticed that  
25 the weather was just -- it's just going bad on us. It's

1 fixing to do the misty rain and all that, so we need to get  
2 on in there and start doing our crime scene before we do  
3 lose something.

4 Q. And at that time you began processing and  
5 photographing the crime scene?

6 A. Yes, sir.

7 Q. Let me show you some photographs which have  
8 been marked. You have seen these photographs outside the  
9 presence of the jury; is that right?

10 A. Yes, sir.

11 Q. They've been marked State Exhibits 73 through  
12 172. Are these photographs that you took in and around the  
13 crime scene at the Oshman's?

14 A. Yes, sir.

15 Q. Would they help you explain your testimony to  
16 the jury?

17 A. They will.

18 MR. SHOOK: Your Honor, at this time we  
19 offer State Exhibits 73 through 172.

20 MR. SANCHEZ: We have no objection, Your  
21 Honor.

22 THE COURT: State's 73 through 172 shall  
23 be admitted.

24 Q. (By Mr. Shook) Let me first show you what has  
25 been marked as State Exhibit 73. Does that show the crime

1 scene, I think, looking down Willowbrook at the officer's  
2 police car here located by the trailer?

3 A. It's Willow Creek Drive. That's a fire truck  
4 in the roadway. That is Officer Hawkins' vehicle under the  
5 trailer. And then the other squad car in the street is one  
6 of the responding officers.

7 Q Okay. And then this is the fire truck that  
8 the fire department wanted to move; is that right?

9 A. Yes, sir.

10 Q. Did you also take measurements and make a  
11 diagram or several diagrams of the crime scene?

12 A. Yes, sir, I did.

13 Q. Let me show you what has been marked as State  
14 Exhibit 173. Does this represent the diagram that you had  
15 made of the crime scene?

16 A. Yes, sir, it does.

17 Q. Does it show where evidence was recovered and  
18 would it help you explain your testimony to the jury?

19 A. It does and it would help.

20 MR. SHOOK: We'll offer State Exhibit  
21 173.

22 MR. SANCHEZ: No objection, Your Honor.

23 THE COURT: State 173 shall be admitted.

24 MR. SHOOK: Your Honor, could I have the  
25 witness step down for a moment to explain the diagram?

1 THE COURT: He may.

2 Q. (By Mr. Shook) Officer Hazard, let me caution  
3 you to step back so all the jurors can see the diagram.  
4 What is it we see here on the diagram itself? What area of  
5 the crime scene?

6 A. What this is, is showing the back loading dock  
7 area of the Oshman's store. This is the loading dock area  
8 right here. This is the store, this gray building. And  
9 then this is the Willow Creek Drive.

10 Q. We see a legend here on the right side. Could  
11 you explain what the legend represents?

12 A. The legend shows what all items are labeled on  
13 the diagram itself. Like the -- it's got all the G's here  
14 would be glass samples that we took at the scene. All these  
15 are -- all the G's are glass. All the B's will be blood  
16 samples that we took at the scene. The T would be a tire  
17 track that goes out of the parking lot. It's -- it's a  
18 bloodprint made every time the tire rotates, so it's in four  
19 places. We did take a sample of the best one at this point.

20 All the lettered items are objects that  
21 are at the scene like a screwdriver, a two-way radio, a  
22 weapon. All the numbers that you see on here the 1, 2, 3,  
23 4, 5, 6, those are all projectiles or pieces of bullets.

24 Q. And these are all items that you eventually  
25 collected; is that right?

1 A. Yes, sir.

2 Q. Now, when you went and started examining the  
3 crime scene and looking at the area here in between this  
4 trailer and trash dumpster, was it evident to you that there  
5 had been some type of collision there between Officer  
6 Hawkins' car and another vehicle?

7 A. Yes, sir, there was.

8 Q. In fact, was there another vehicle found that  
9 evening near this location that you felt was involved in the  
10 crime scene?

11 A. Yes, sir.

12 Q. What type of vehicle was that?

13 A. It's a Ford Explorer.

14 Q. Was that a Ford Explorer that belonged to Wes  
15 Ferris, one of the managers?

16 A. Yes, sir, it was.

17 Q. And where was that located?

18 A. That was located in an apartment complex  
19 within sight of this scene, really.

20 Q. Okay. And did it appear to you that somewhere  
21 in this area there had been a collision between Officer  
22 Hawkins' car and that Ford Explorer?

23 A. Yes, sir, right in this area.

24 Q. Now, was a tape retrieved from a car lot which  
25 is directly behind this Oshman's?

1 A. Yes, sir, there was.

2 Q. What type of tape was that?

3 A. It's a surveillance tape that they have up on  
4 a pole of a car lot where it's showing their cars in the  
5 front of the parking lot to help, I guess, prevent theft.  
6 It does catch part of this parking lot.

7 Q. Okay. What portion of the parking lot does it  
8 catch?

9 A. The -- it shows mostly the cars, but you do  
10 get to see a little bit of this area.

11 Q. Okay. In fact, would you explain to the jury  
12 how the video -- you have seen the videotape many times; is  
13 that right?

14 A. Yes, sir, I have.

15 Q. Is it an actual moving motion picture of the  
16 area?

17 A. What it does is it tapes every few seconds.  
18 So it's not a continuous video, but it tapes -- every few  
19 seconds it takes a picture. It also has the time on the  
20 frame of the -- each frame. It's in military time and it's  
21 an hour off because they had not set it back yet.

22 Q. So every few seconds the camera takes a  
23 photograph of whatever is out in front of it?

24 A. Yes, sir.

25 Q. And you have viewed this videotape several

1 times?

2 A. I've viewed it several times at different  
3 speeds, frame by frame, a lot of times.

4 Q. Okay. By viewing the videotape, were you able  
5 to determine the movements of the cars as they occurred back  
6 there?

7 A. Yes, sir.

8 Q. And how were you able to do that?

9 A. You can determine the movement of the cars by  
10 their brake lights and by their headlights. You can see  
11 them coming down the road. If you watch the tape at a  
12 faster speed, you can see the silhouettes of the vehicles a  
13 lot easier. If you watch it at a slower speed, you can see  
14 the brake lights of a vehicle a lot better.

15 The Ford Explorer has that third brake  
16 light that's up high. So you know whenever he's hitting his  
17 brakes, you can always tell when his brakes are on and when  
18 they're off.

19 Q. And that's how you were able to determine the  
20 movements of the cars?

21 A. Yes, sir.

22 Q. Now, was the tape of a quality that you can  
23 ever see any individuals outside the cars walking around?

24 A. No, sir.

25 Q. You can really only see the brake lights and



1 taillights, that sort of thing?

2 A. You can see the movement of the cars only.  
3 You don't see any people in this parking lot and the only  
4 way that you would is in the parking lot where the tape is  
5 actually intended to shoot.

6 Q. Were you able to determine the time of the  
7 movement of the cars?

8 A. Yes, sir.

9 Q. And how were you able to do that?

10 A. By each frame that it shows has that military  
11 time with the minutes -- hours, minutes, and seconds down in  
12 the lower corner.

13 Q. Okay. You may have a seat. Let me show you  
14 what has been marked as State Exhibit 174. Is that the  
15 original tape?

16 A. Yes, sir, it is.

17 Q. And State Exhibit 174-B is that a copy of the  
18 tape which has been -- has real time as well as slow time on  
19 it?

20 A. Yes, sir, it is.

21 MR. SHOOK: Your Honor, at this time we  
22 will offer State Exhibits 174 and 174-B.

23 MR. SANCHEZ: No objection, Your Honor.

24 THE COURT: State 174 and 174-B shall be  
25 admitted.

1 Q. (By Mr. Shook) Let me show you State Exhibit  
2 864. Is this a diagram that shows or reflects the times of  
3 the various car movements that you observed on the tape?

4 A. It is.

5 Q. Would it help you explain your testimony to  
6 the jury?

7 A. It would.

8 MR. SHOOK: We'll offer State Exhibit  
9 864.

10 MR. SANCHEZ: No objection, Your Honor.

11 THE COURT: No. 864 shall be admitted.

12 Q. (By Mr. Shook) The diagram that was just  
13 placed on the wall next to you, that actually shows some of  
14 the time that you actually saw vehicle movement on the tape;  
15 is that right?

16 A. Yes, sir, it is. On this diagram the time is  
17 corrected. On the tape it will show the military time an  
18 hour off, but this has the correct time.

19 Q. Let me start the tape and we'll pause it and  
20 go over some things with the jury. Okay? Now, the tape  
21 being on pause now, the majority of the tape you see is the  
22 actual parking lot itself; is that right?

23 A. Yes, sir, it is. The area that I'm watching  
24 for in this tape is in the very upper, left-hand corner of  
25 the screen.

1 Q. This is the area of the Oshman's, the back  
2 area?

3 A. Yes, sir.

4 Q. Okay. And this area here, is this Willow  
5 Creek?

6 A. That's Willow Creek Drive.

7 Q. And by playing it at various speeds, you were  
8 able to determine when the Explorer arrived, as well as when  
9 Officer Hawkins arrived; is that right?

10 A. Yes, sir.

11 Q. The clock there, that's what we see down at  
12 the bottom?

13 A. Yes, sir. That's the clock with the military  
14 time at the bottom.

15 Q. And this is the actual very quick speed; is  
16 that right?

17 A. Yes, sir.

18 Q. There's another version we'll see in a moment  
19 where you have slowed the tape down?

20 A. Yes, sir. The Explorer was just in there.  
21 Officer Hawkins is in there.

22 Q. The time we see down there 19:31 is actually  
23 --

24 A. 6:31:03.

25 Q. And what we're looking at now is the Explorer

1 and Officer Hawkins' car would be back there?

2 A. Yes, sir. And that -- it's over with now.

3 Q. These are the various police cars arriving?

4 A. Yes, sir.

5 Q. Now, is this the tape on a slower speed?

6 A. Yes, sir.

7 Q. Okay. And we're at approximately 6:27 p.m.;  
8 is that correct?

9 A. Yes, sir.

10 Q. Now, the first time you noted on the diagram  
11 is 6:27:42, which you saw the Explorer northbound on Willow  
12 Creek; is that right?

13 A. Yes, sir. That's him right -- you can see the  
14 headlights coming on Willow Creek Drive now. They are about  
15 the middle of the screen right there.

16 Q. This would be the headlights of the Explorer?

17 A. Yes, sir.

18 Q. And when I take this off pause, you would be  
19 able to see the Explorer as it goes into the back of the  
20 parking lot?

21 A. Yes, sir.

22 Q. Your next time on there is 26:28:03. Is that  
23 the time that you notice the Explorer parks?

24 A. Yes, sir.

25 Q. That's the Explorer going in. Now, we've had

1 to skip over a little bit of the time here, but the next  
2 important time frame you put down is at 6:28:56, the brake  
3 lights went off on the Explorer?

4 A. Yes, sir.

5 Q. So it had been parked almost a minute at that  
6 point in time; is that right?

7 A. Almost a minute.

8 Q. Okay. Then at 6:29:52 you noted that the  
9 brake lights were back on and the Explorer moves to a second  
10 position?

11 A. Yes, sir.

12 Q. So it actually moved one time before Officer  
13 Hawkins arrived?

14 A. Yes, sir.

15 Q. And you were able to tell that, again, by the  
16 brake lights?

17 A. By the brake lights and also the silhouettes  
18 of the vehicle.

19 Q. Did it generally stay in the same area?

20 A. Yes, sir.

21 Q. And then the next time you put on there is  
22 6:30:31 seconds, Officer Hawkins is northbound on Willow  
23 Creek?

24 A. Yes, sir.

25 Q. Does he come from the same direction that the

1 Explorer did?

2 A. He does.

3 Q. Would that be Officer Hawkins' car as we saw  
4 the headlights coming?

5 A. Yes, sir. He's behind him now.

6 Q. The time you noted after looking at the tape  
7 was that he stopped behind the Explorer at 6:30:51 seconds?

8 A. Yes, sir.

9 Q. The next movement you saw was both cars moving  
10 forward?

11 A. Yes, sir.

12 Q. How were you able to determine that?

13 A. From the -- again, from watching the video you  
14 can see the silhouettes and you can see the lights of both  
15 of them move forward simultaneously.

16 Q. And then at 6 hours, 31 minutes and 24 seconds  
17 you saw both cars move backwards?

18 A. Yes, sir.

19 Q. Were you able to determine where Mr. Hawkins'  
20 car went on the videotape?

21 A. It goes out of view off the screen.

22 Q. And then at 6 minutes 3 -- 6:31 and 38  
23 seconds, the Explorer exits the parking lot?

24 A. He leaves without his lights on. That's him  
25 leaving there.

1 Q: That was the white car we saw leaving?

2 A. Yes, sir.

3 Q. So at the time that Officer Hawkins actually  
4 parked behind the Explorer at 6 minutes -- 6:30 and 51  
5 seconds, to the time that the Explorer actually leaves is  
6 roughly, what, 47 seconds?

7 A. Yes, sir.

8 Q. And, again, you had to watch this tape a  
9 number of times at different speeds to determine these exact  
10 times?

11 A. Yes, sir, over and over.

12 Q. Okay. You had another exhibit made of -- copy  
13 of your exhibit, actually, that was metallic, is that right,  
14 that had some magnets on it?

15 A. Yes, sir.

16 Q. Would it help you demonstrate the actual  
17 movements of the cars as they occurred in the actual parking  
18 lot?

19 A. It would.

20 Q. Let me show you State Exhibit 187. Is this a  
21 copy of your diagram which would assist you in showing the  
22 jury the movement of the cars?

23 A. It is and it would.

24 MR. SHOOK: We'll offer State Exhibit  
25 187.

1 MR. SANCHEZ: We have no objection, Your  
2 Honor.

3 THE COURT: No. 187 shall be admitted.

4 MR. SHOOK: Can the officer step down  
5 again for a moment?

6 THE COURT: Yes.

7 Q. (By Mr. Shook) Now, looking at the exhibit,  
8 it's just a little bit of a smaller replica of the diagram  
9 that the jury has already seen; is that right?

10 A. Yes, sir.

11 Q. We have the area of the trailer and dumpster  
12 and where all the debris is located?

13 A. Yes, sir.

14 Q. Using this vehicle representing the Ford  
15 Explorer and this vehicle representing Officer Hawkins' car,  
16 I would like you to show to the jury exactly the areas you  
17 believe you saw the Explorer park in, where it moved to, and  
18 where the collision actually occurred.

19 A. All right. You want me to do it by the time?

20 Q. Sure.

21 A. At 6:27:42 when the Explorer is northbound on  
22 this Willow Creek Drive, it's coming down this roadway here.  
23 And then at 6:28:03, the Explorer parks in this area over  
24 here.

25 Q. So the original area was somewhere in this



1 area?

2 A. Yes, sir.

3 Q. And how long does it sit there?

4 A. Let's see, it sits there for about a minute.

5 The brake lights are off then at 6:29:52, the brake lights  
6 come back on and the Explorer starts to move to a second  
7 position.

8 Q. Okay.

9 A. Okay. Officer Hawkins at 6:30:31 is  
10 northbound on Willow Creek Drive. So he's coming up Willow  
11 Creek. You see him turn onto the road back down here and  
12 he's coming up here as this car is moving into here.

13 Q. Okay.

14 A. Okay. At 6:30:51 Officer Hawkins is stopped  
15 behind the Explorer and he's in this area right about like  
16 this.

17 Q. You positioned Officer Hawkins' car a little  
18 -- not the exact --

19 A. Not exactly behind him. He's just a little  
20 bit to -- a little bit offset.

21 Q. And how were you able to determine that exact  
22 position?

23 A. From the collision, from the damage on both  
24 vehicles.

25 Q. Okay.

1 A. Okay. And then at 6:31:09, both of these move  
2 forward at the same time.

3 Q. Okay. And then what did you see next?

4 A. The next thing you see at 6:31:24 is that both  
5 vehicles move back. This one, Officer Hawkins goes off the  
6 screen. You can't see it. This one moves over to this area  
7 or backs up to this area. And then at 6:31:38, you see it  
8 exit the parking lot. He comes out this way and then heads  
9 down Willow Creek with his lights off.

10 Q. And that's the white car that we saw on --

11 A. Yes, the white Ford Explorer.

12 Q. So you believe the collision actually occurred  
13 somewhere in this area?

14 A. Yes, sir.

15 Q. And the cars move forward?

16 A. Yes, sir. From the debris and the blood, this  
17 is where the collision would have occurred.

18 Q. We see on the diagram an area of blood and  
19 then some other treadmarks; is that right?

20 A. Yes, sir.

21 Q. You examined the scene out there pretty  
22 closely. What did you determine what had occurred?

23 A. What had occurred here is when the -- at the  
24 time when both vehicles were -- had moved forward, Officer  
25 Hawkins had already been shot. He was removed from the car

1 in this area. Someone had drug him about six feet. There  
2 was a six-foot drag mark on the pavement where they drug him  
3 over to this area.

4 And then you see when both cars move,  
5 this one moves back to this area. The Explorer backs over  
6 Officer Hawkins. He lodges under the front tire of the  
7 vehicle and it drags him back to this area. And then the  
8 Explorer leaves out of the parking lot and Officer Hawkins  
9 remains in that area.

10 Q. How many feet did it drag Officer Hawkins?

11 A. At least ten feet.

12 Q. And how were you able to determine that?

13 A. There's a six-foot drag mark on the pavement.  
14 It's just a bloody object being drug by someone, not by a  
15 car. And there's at least ten feet of skidmark from the  
16 front tire of the Explorer and Officer Hawkins' magazine  
17 pouch where it's in contact with the ground and it's  
18 grinding away his magazine pouch as he's being drug on the  
19 pavement.

20 Q. So actually the grinding of his magazine pouch  
21 caused a skidmark as it went along?

22 A. Right. His magazine pouch caused a skidmark  
23 on -- to be left, about ten-foot long, and the front tire of  
24 the Explorer as Officer Hawkins is lodged against the front  
25 tire, it won't let it turn. And as the Explorer backs up,

1 it leaves a skidmark, also.

2 Q. So they have identical skidmarks?

3 A. Yes, sir.

4 Q. You can have a seat. I want to go over some  
5 of the photographs that were at the scene about the areas  
6 that we talked about. First, State Exhibits 74 and 75, does  
7 that show some of the debris that was out in the roadway?

8 A. This is across the street from that parking  
9 lot. What you are seeing in that photograph is one of those  
10 soft nylon kind of zip-up bags, athletic bags. It's blown  
11 across the road into the grass.

12 Q. Another type of bag here was also out there?

13 A. That's that same bag close up. Close-up view  
14 of it.

15 Q. Still had its tags on it?

16 A. Yes, sir.

17 Q. Now, let me show you State Exhibit 76. Is  
18 this a photograph of the crime scene you were just talking  
19 about, the area where the collision occurred and where  
20 Officer Hawkins was left?

21 A. Yes, sir, it is.

22 Q. What are these police officers doing here?

23 A. They are guarding that back door. It's  
24 because at the time, we were still thinking there may be  
25 some hostages or still the store employees were in there and

1 maybe some -- still some of the ones that did this still in  
2 there. We're not sure who is still in the store.

3 Q. So you were photographing the scene while the  
4 officers were still guarding the doors?

5 A. Yes, sir.

6 Q. Hostages were still inside?

7 A. Yes, sir.

8 Q. What is it we see right down here in the  
9 bottom of the photograph?

10 A. That's Officer Hawkins' ballistic vest he  
11 wears under his shirt.

12 Q. This debris up here, what is this?

13 A. That is some more of those soft athletic bags.  
14 There's three of them up in that area. One of them has got  
15 a lot of ammunition in it. There's at least forty boxes of  
16 ammunition of various types that are in there. There's some  
17 binoculars in there. There's a two-way radio up there.

18 Q. Let me show you State Exhibit 77 taken from  
19 another angle. Does that show the bag that had various  
20 items in it?

21 A. Yes, sir. That's the bag where, as you can  
22 tell, it's been hit or run over and that's some of the  
23 ammunition that's scattered on the pavement.

24 Q. These are boxes of ammunition?

25 A. Yes, sir.

1 Q. Now, did you take Officer Hawkins' police car  
2 to the Irving auto pound?

3 A. Yes, sir.

4 Q. For a closer examination?

5 A. Yes, we did.

6 Q. And did you also take the white Ford Explorer  
7 there?

8 A. Yes, sir.

9 Q. State Exhibit 79, does that show the damage to  
10 the front of Officer Hawkins' car?

11 A. It does.

12 Q. Is this the push bar on Officer Hawkins' car?

13 A. It is.

14 Q. State Exhibit 78, is this some of the debris  
15 that you recovered?

16 A. That is some of the debris that was at the  
17 scene I had taken back to the office. The fiberglass at the  
18 top of the picture is put back together, pieced back  
19 together, and the rest of it is all part of -- it's -- all  
20 of that right there is part of Officer Hawkins' car.

21 Q. State Exhibit 82, were you able to take  
22 Officer Hawkins' car and match it up where you believe the  
23 collision occurred with the Ford Explorer?

24 A. Yes, sir.

25 Q. And is that what we see here in this

1 photograph?

2 A. What we're seeing here is the back bumper of  
3 the Ford Explorer on the right and Officer Hawkins' front  
4 push bar on the left of this picture and that's how they  
5 lined up.

6 Q. Okay. And State Exhibit 81, does this show  
7 where the angle of the cars would have been right before the  
8 collision?

9 A. Yes, sir. This is how they lined up for that  
10 damage to have occurred.

11 Q. Let me go back to the area where that -- where  
12 you believe Officer Hawkins was drug. Let me show you State  
13 Exhibit 84. Do we see part of the drag mark there?

14 A. Yes, sir.

15 Q. What is this item here that's located near the  
16 drag mark?

17 A. That's another one of those soft -- it's like  
18 a briefcase, really, but it's a soft one, zip-up bag.

19 Q. Okay. State Exhibit 85, does this show the  
20 drag mark from a different angle?

21 A. Yes, sir.

22 Q. Do you believe Officer Hawkins was drug in  
23 this direction?

24 A. Yes, sir.

25 Q. What do we see here?

1           A.       That's a Smith & Wesson .357 revolver,  
2 four-inch revolver.

3           Q.       And did you collect that?

4           A.       Yes, sir.

5           Q.       Let me show you what has been marked State  
6 Exhibit 178. Do you recognize that?

7           A.       Yes, sir.

8           Q.       Is that the weapon, the .357 that you  
9 recovered from behind the Oshman's?

10          A.       It is.

11                   MR. SHOOK: Your Honor, at this time  
12 we'll offer State Exhibit 178.

13                   MR. SANCHEZ: No objection, Your Honor.

14                   THE COURT: No. 178 shall be admitted.

15          Q.       (By Mr. Shook) Officer Hazard, could you  
16 explain to the jury what type of weapon State Exhibit 178  
17 is.

18          A.       This is a .357 Magnum revolver. It's a  
19 four-inch weapon, meaning the barrel is four inches. When I  
20 say it's a revolver, it has a cylinder that you open and you  
21 load the bullets into the cylinder and then you close the  
22 cylinder and you are able to fire the weapon. This weapon  
23 will shoot .357 Magnum bullets or .38 Special bullets.

24          Q.       Did you examine that gun to see if it had been  
25 fired?



1 A. Yes, sir.

2 Q. And what did you find?

3 A. This weapon had one of the bullets fired, the  
4 one that was under the hammer, and then it had five that  
5 were still live, had not been fired yet.

6 Q. So from just examining the gun, there was one  
7 spent round under the hammer and then five live rounds?

8 A. Yes, sir.

9 Q. Did you make an effort to fingerprint the  
10 weapon?

11 A. Yes, sir. It was sent to the lab to be  
12 fingerprinted.

13 Q. Were any comparable fingerprints recovered?

14 A. No.

15 Q. Is that unusual to not recover fingerprints or  
16 readable fingerprints from a handgun?

17 A. That's not unusual at all.

18 Q. Okay. Did you make efforts to find out any --  
19 determine any serial numbers on that particular gun?

20 A. Yes, sir.

21 Q. How were you able to do that?

22 A. I took the grips off of it. The serial number  
23 that's supposed to be on the side is not there, but I took  
24 the grips off and there's some numbers on the bottom of the  
25 frame.

1 Q. And at that point in time you were able to  
2 determine the numbers and later match those to those taken  
3 from the escape from the Texas Department of Corrections?

4 A. Yes, sir. They were numbers that the Texas  
5 Department of Corrections engraves on their weapons.

6 Q. Let me show you State Exhibit 187. This  
7 object we see down at the bottom, what is that?

8 A. That's a little two-way radio. That's not  
9 Officer Hawkins' radio. This is more like a walkie-talkie  
10 that you would buy for your kids or something like that.

11 Q. Let me show you State Exhibit 179. Is this  
12 the radio that you recovered that we see in the photograph?

13 A. Yes, sir, it is.

14 MR. SHOOK: Your Honor, at this time we  
15 offer State Exhibit 179.

16 MR. SANCHEZ: No objection, Your Honor.

17 THE COURT: No. 179 shall be admitted.

18 Q. (By Mr. Shook) Again, is this the two-way  
19 radio that says Radio Shack on it; is that right?

20 A. Yes, sir.

21 Q. Did you go out the next day to photograph the  
22 drag marks that you previously explained to the jury?

23 A. Yes, sir.

24 Q. Let me show you State Exhibits 90 and 91. Do  
25 we see some chalk marks there on the photograph?

1 A. Yes, sir. It's a little faint on this, but in  
2 the lower right you can see the tire mark and the magazine  
3 skidmark. I've outlined them with the chalk and then taken  
4 photographs of it.

5 Q. Is this the area where you saw the skidmarks?

6 A. Yes, sir.

7 Q. And State Exhibit 91?

8 A. That's the same thing from a different view.

9 Q. Is that the actual treadmarks on the tire  
10 here?

11 A. Yes, sir.

12 Q. And then the magazine skidmark, is that  
13 located right here?

14 A. Yes, sir.

15 Q. Did you later examine Officer Hawkins' belt?

16 A. Yes, sir.

17 Q. Let me show you what has been marked as State  
18 Exhibit 175. Is that his magazine pouch?

19 A. Yes, sir.

20 Q. State Exhibit 176, would this be Officer  
21 Hawkins' radio?

22 A. Yes, it is.

23 Q. And then State Exhibit 177, is this Officer  
24 Hawkins' Sam Brown belt?

25 A. Yes, it is.

1 MR. SHOOK: Your Honor, at this time we  
2 offer State Exhibits 175, 176, 177.

3 MR. SANCHEZ: We have no objection, Your  
4 Honor.

5 THE COURT: Nos. 175, 176, and 177 shall  
6 be admitted.

7 Q. (By Mr. Shook) First of all, No. 176, is this  
8 the type of radio an officer can carry on his belt so he can  
9 be in contact at all times?

10 A. Yes, sir, it is.

11 Q. Did it appear to have some damage to it?

12 A. Yes, sir, it does.

13 Q. As far as possibly being drug or run over?

14 A. Yes, sir.

15 Q. All right. Now, you said that you could  
16 determine the skidmark from Officer Hawkins' body because of  
17 his magazine pouch; is that right?

18 A. Yes, sir.

19 Q. Is that what we see here on State Exhibit 175?

20 A. Yes, sir, it is.

21 MR. SHOOK: Could I have the witness step  
22 down to demonstrate the damage to the pouch?

23 THE COURT: He may.

24 Q. (By Mr. Shook) If you would, Officer Hazard,  
25 just go down the line with the jury and explain to them what

1 you see as far as the damages.

2 A. All right. This magazine pouch should look  
3 similar to mine. Mine has got complete sides. This side  
4 has been ground away and this is ground, along with the  
5 flap. That's from it being in contact with the ground or  
6 the pavement. It should look something similar to mine.

7 Q. And that caused the ten-foot skidmark which  
8 paralleled the skidmark that you saw from the tire; is that  
9 right?

10 A. Yes, sir. Also, at the end of that skidmark  
11 there's a loose magazine, like one of mine, laying on the  
12 pavement.

13 Q. Okay. The belt itself, did it appear to have  
14 some damage?

15 A. Yes, sir.

16 Q. Could you specifically show this to the jury?

17 A. Okay. This belt -- we do have a different  
18 wear on our belt from time to time, but never something as  
19 severe as this. This is from this occurring, this crime.  
20 This gouge in the belt.

21 Q. Did you examine the underside of the Ford  
22 Explorer?

23 A. Yes, sir.

24 Q. And did you discover evidence there that you  
25 believe showed Officer Hawkins was, indeed, run over by the

1 car?

2 A. Yes, sir.

3 Q. What type of evidence was that?

4 A. A piece of leather and some areas underneath  
5 the vehicle that had been -- where the dirt had been wiped  
6 and also some blood.

7 Q. All right. Let me show you State Exhibit 92.  
8 Does this show the underside of the Ford Explorer?

9 A. It does.

10 Q. And are these the areas you saw that looked  
11 like had been wiped at some point in time?

12 A. Yes, sir. On the left-hand part of the screen  
13 where the shock absorber comes down where it mounts on the  
14 bottom, there's a place on the bottom of that shock absorber  
15 where the dirt has been wiped away.

16 Q. Somewhere down in this area?

17 A. Yes, sir, right in that area.

18 Q. State Exhibit 93, we're seeing the same thing  
19 on a different portion of the car?

20 A. Yes, sir. This is a crossmember underneath  
21 the Ford Explorer and the dirt has been wiped away near  
22 where you see that number.

23 Q. This area here?

24 A. Yes, sir.

25 Q. And then State Exhibit 94, is this the area

1 where you saw the piece of leather that you believe  
2 corresponded to the belt?

3 A. Yes, sir. This is -- that's the front tire on  
4 the driver's side. That's the fender up there and where you  
5 have the light is a piece of leather that's hung on that  
6 fender.

7 Q. You believe this was the tire that Officer  
8 Hawkins' body was hung up against?

9 A. Yes, sir. This is the tire that was causing  
10 the skid where his body is against it when they are going  
11 backwards.

12 Q. You also said that there was blood evidence  
13 under the car and on the tire; is that right?

14 A. Yes, sir.

15 Q. Does State Exhibit 95 show some of that blood  
16 evidence?

17 A. Yes, sir. This is the back tire of the  
18 Explorer on the driver's side and that's up -- that's some  
19 blood in that area.

20 Q. All right. State Exhibit 96, does this show  
21 some of the blood spatter on the side of the car?

22 A. Yes, sir. This is the -- that fender well of  
23 the tire we just saw and that's some cast-off blood.

24 Q. And then State Exhibit 97, we see more blood  
25 here on the side of the car?

1 A. Yes, sir.

2 Q. Okay. Let me show you State Exhibit 100. Is  
3 this the pistol we've already seen in evidence after it was  
4 back at your offices?

5 A. Yes, sir.

6 Q. You said you had opened it. State Exhibit  
7 101, does that show the one round that had been fired?

8 A. Yes, sir. That top cylinder, you can see the  
9 primer is indented on the bullet.

10 Q. That's what we're seeing right here?

11 A. Yes, sir. That's the spent bullet and the  
12 rest of them are still live.

13 Q. And State Exhibit 102, does that show the  
14 serial number you were able to recover?

15 A. Yes, sir. This is with the grips off the  
16 weapon.

17 Q. Okay. Now, State Exhibit 103, does that show  
18 another item you recovered out at the scene?

19 A. Yes, sir.

20 Q. What is that?

21 A. That's a screwdriver that was left near that  
22 area where all that debris was.

23 Q. Some red paint appear on it?

24 A. Yes, sir.

25 Q. And the bag that was left had various types of



1 ammunition; is that correct?

2 A. Yes, sir.

3 Q. Is that what we see here in State Exhibit 104?

4 A. Yes, sir. What we've done is we've taken the  
5 ammunition back to our office and we've kind of grouped it  
6 to what caliber that they had taken.

7 Q. You also took -- did an examination of Officer  
8 Hawkins' car out there at the scene; is that right?

9 A. Yes, sir.

10 Q. Was it running at the time that you examined  
11 it?

12 A. His car was running, it was in reverse, and  
13 the driver's door was open.

14 Q. Okay. Is there a shotgun in that car?

15 A. There is a shotgun in the overhead rack that  
16 was still there and it was locked.

17 Q. Let me show you State Exhibit 110. Is this  
18 the -- Officer Hawkins' car back at your -- the Irving  
19 police pound?

20 A. It is.

21 Q. Did you do a closer examination of it and  
22 photograph the damage caused to it by gunfire?

23 A. Yes, sir.

24 Q. Here we see the back of the vehicle. The back  
25 windshield seems to be broken out; is that right?

1 A. Yes, sir.

2 Q. Could you determine at that time how that  
3 occurred?

4 A. Well, it's initially broke by some bullets  
5 that passed through the back window. And then it also  
6 struck the trailer that it was under. It's got a little bit  
7 of damage to the back of the car there on that back corner  
8 on the driver's side.

9 Q. Okay. Let me show you what has been marked as  
10 State Exhibit 111. Does this show some damage done by  
11 bullets to the front of the car?

12 A. Yes, sir. It's showing the damage to the push  
13 bumper and there's two bullet holes in the hood on the  
14 driver's side and then two on the windshield on the driver's  
15 side. You can see four bullet holes on the passenger side.

16 Q. The four bullet holes are here?

17 A. Yes, sir.

18 Q. Let me get a closer view of this on State  
19 Exhibit 112. These are the two bullet holes into the hood  
20 of the car?

21 A. Yes, sir.

22 Q. And then there's another one here at the  
23 bottom of the windshield?

24 A. Yes, sir.

25 Q. And then another one located here?

1 A. Yes, sir.

2 Q. And we have four more on this side?

3 A. Yes, sir.

4 Q. State Exhibit 113, did you try to trace the  
5 path or see what damage was caused under the hood?

6 A. Yes, sir.

7 Q. From these two bullets?

8 A. Yes, I did.

9 Q. What do we see in State Exhibit 114?

10 A. This is showing the -- what one of the bullets  
11 did. You can see that dent on the drum behind the master  
12 cylinder. That's from one of the projectiles that went  
13 through the hood and struck that and dented and probably  
14 fell to the ground.

15 Q. And No. 115, what do we see there?

16 A. This is showing in the weather stripping where  
17 one of the bullets had struck it, also.

18 Q. All right. Now, was there a bullet recovered  
19 near that dashboard area, a projectile?

20 A. Yes, sir.

21 Q. Where was that recovered?

22 A. Right behind the speedometer of the car.

23 Q. Could you determine which -- where that bullet  
24 had come from or which bullet hole into the windshield?

25 A. That's from the one that's lowest in the

1 windshield, the lowest one near the VIN plate and the hood.

2 Q. This area right here?

3 A. Yes, sir. That's the one that we found right  
4 behind the speedometer.

5 Q. So that would have been recovered somewhere in  
6 this area?

7 A. Yes, sir.

8 Q. And was that submitted to the crime lab?

9 A. Yes, it was.

10 Q. Then we had one more bullet hole in this area?

11 A. Yes, sir.

12 Q. Now, I'm showing you State Exhibit 118. Does  
13 this show the rough angle, you think, where the bullet  
14 struck the passenger side of the windshield?

15 A. Yes, sir.

16 Q. Here, here, and also at that top?

17 A. Yes, sir.

18 Q. State Exhibit 119, that's the -- shows the top  
19 of the windshield. What is this object here behind this  
20 where this damage is done?

21 A. That's a video camera that this car was  
22 equipped with, a video camera.

23 Q. Did it appear that the bullet had struck the  
24 video camera?

25 A. Yes, sir.

1 Q. Is that what we see here in State Exhibit 120?

2 A. Yes, sir, that's the video camera.

3 Q. State Exhibit 121, does that show kind of an  
4 inside view of what it would look like as far as the damage  
5 caused by the bullets?

6 A. Yes, sir, it does.

7 Q. Let me show you State Exhibit 124. This is  
8 from the back window. What damage do we see here?

9 A. On that hump there at the back deck, there's a  
10 bullet hole going in where your light is, and then one that  
11 comes out to the left of it.

12 Q. All right. Did you examine the side of the  
13 car, the driver's side, and see some damage caused to the  
14 driver's window?

15 A. Yes, sir.

16 Q. Did it appear that the driver's window had  
17 been shot out?

18 A. Yes, it did.

19 Q. Is that the damage that we see here in State  
20 Exhibit 125?

21 A. Yes, sir. This is also showing that the  
22 window was completely up and it has a place where a bullet  
23 has struck on the door post and the top corner of it.

24 Q. Is that what we see in 126?

25 A. Yes, sir.

1 Q. This area here?

2 A. Yes, sir.

3 Q. So that window would have to have been up for  
4 that type of damage to occur?

5 A. Yes, sir.

6 Q. State Exhibit 127, what do we see there?

7 A. This is the interior of Officer Hawkins' squad  
8 car. This is showing the driver's seat with the majority of  
9 the glass there and then a computer that sits in the middle  
10 of the car has a bullet projectile in the keyboard.

11 Q. Okay. Let me show you State Exhibit 130.  
12 Does that show a closer view of the damage done to the  
13 bullet there?

14 A. Yes, sir.

15 Q. We're talking about this area right here?

16 A. Yes, sir. That's where a bullet has struck  
17 the keyboard.

18 Q. Okay. Now, after you photographed this, did  
19 you find various bullet projectiles that you collected  
20 throughout this crime scene?

21 A. Yes, sir.

22 Q. Let me show you State Exhibit 129. Does that  
23 show one of those projectiles or a piece of a bullet  
24 fragment?

25 A. Yes, sir. On the back of that, that's a

1 fragment from a bullet.

2 Q. Okay. What types of fragments did you find in  
3 the car and outside the car?

4 A. Lead and copper.

5 Q. Could you explain to the jury what a copper  
6 jacketed bullet is.

7 A. You can buy bullets that are just plain lead  
8 or you can buy them that have a copper jacket surrounding  
9 the lead. The copper jacket kind of holds the bullet, makes  
10 a stronger bullet. So very often when they are fired, you  
11 will find that they will come apart. You will find the lead  
12 in one area and the copper jacket in another. Sometimes  
13 they stay together and sometimes not.

14 Q. Could you determine from looking at the car  
15 whether Officer Hawkins had his seatbelt on at the time of  
16 the incident?

17 A. Yes, sir.

18 Q. And what was your determination?

19 A. That he did not have it on.

20 Q. Why was that?

21 A. Because there's blood and tissue on the  
22 seatbelt buckle part, but there's a lack of the same on the  
23 actual release button where it would snap into. Also, he  
24 carried a clipboard just below the release button and that  
25 clipboard had a sheet of paper on it that had no blood on it

1 at all.

2 Q. That's what we see here in State Exhibit 128?

3 A. Yes, sir. That's that clipboard, that's his  
4 activity sheet, and you see the lack of any blood on it.

5 Q. Let me show you what has been marked as State  
6 Exhibit 135. Do you see another bullet fragment there?

7 A. Yes, sir. That's on the front passenger seat.  
8 Officer Hawkins carried an equipment bag. He really carried  
9 several equipment bags. That's one that's in the seat and  
10 that piece of copper jacket is laying in front of his  
11 equipment bag.

12 Q. Now, does 136 show the seat after that  
13 equipment bag has been removed?

14 A. Yes, it does.

15 Q. And what type of object do we see there?

16 A. There's a piece of copper jacket, but there's  
17 also part of his -- he wore his award medals above his name  
18 tag and one of his medals was struck by a bullet and part of  
19 that medal came apart in the car.

20 Q. And that's what we see right here?

21 A. Yes, sir, part of that.

22 Q. And State Exhibit 138, does that show another  
23 bullet fragment that was removed from the side of the door?

24 A. This is the front passenger side door and  
25 that's that kick panel on the bottom part of the door where



1 a copper jacket is stuck in that carpet.

2 Q. State Exhibit 139, is this a piece of cloth  
3 that you took into evidence?

4 A. Yes, sir. That's the -- above the -- where  
5 the driver sits on his seat, right above his shoulder.

6 Q. Did that appear to you that that might be part  
7 of one of the patches on his uniform?

8 A. Yes, sir.

9 Q. Did you find more bullet fragments in the back  
10 seat of the car?

11 A. Yes, sir.

12 Q. State Exhibit 141, do we see some of the  
13 fragments there?

14 A. Yes, sir. Near the I-bolt there's a lead  
15 projectile right there.

16 Q. As far as the lead projectiles and the copper  
17 jackets, did you make careful note of where you recovered  
18 these?

19 A. Yes, sir.

20 Q. And then you submitted all those to the crime  
21 lab?

22 A. Yes, sir.

23 Q. And hoped to compare them to the weapons that  
24 they recovered later?

25 A. Yes, sir.

1 Q. And State Exhibit 143, does this show the back  
2 window as it had been knocked out?

3 A. That's as it appeared at the scene. It still  
4 had the glass in it. There's still glass on the deck.  
5 Earlier when we saw the one where the bullet went through  
6 the deck and went out, we had cleaned that glass off so we  
7 could see it.

8 Q. Now, the Ford Explorer itself, did you find  
9 some bullet damage to it?

10 A. Yes, sir.

11 Q. Where was that?

12 A. In the driver's door of the Ford Explorer.

13 Q. Okay. Let me show you State Exhibit 148, does  
14 that show the driver's door as it was open?

15 A. Yes, sir.

16 Q. In what area of the car did you find some  
17 bullet holes?

18 A. Just below the window or door lock, there's a  
19 bullet hole there. And where the mirror control, where the  
20 control button would be, there's a bullet hole there.

21 Q. This area here?

22 A. Yes, sir.

23 Q. State Exhibit 149, does that show the door at  
24 the angle it could have been open when it was struck?

25 A. That's with the door all the way open, as far

1 open as it would go. And what we've done is stuck some  
2 metal flags in there that kind of show the angle that the  
3 bullets entered.

4 Q. And 150 shows the other angle the door could  
5 have been at?

6 A. That shows the minimum angle that you could  
7 have had the door open and still have both of those bullet  
8 holes in there from the outside.

9 Q. Okay. Now, there's some blood evidence inside  
10 the Explorer; is that right?

11 A. Yes, sir.

12 Q. Let me show you State Exhibit 153. Does this  
13 show the blood that was on the driver's seat?

14 A. Yes, it does.

15 Q. And State Exhibit 154 shows another angle of  
16 that?

17 A. Yes, it does.

18 Q. Did you collect that blood and submit it to  
19 the lab?

20 A. Yes.

21 Q. What procedure did you use in collecting this  
22 blood?

23 A. This blood was wet enough that you can collect  
24 it just directly. We have a little plastic dish that has a  
25 white cloth in it and what we do when we collect blood is we

1 put on some gloves and we take that little white cloth and  
2 put it in the blood, if it's wet, and put it back in the  
3 dish and label the dish as to where we got it.

4 If the blood sample is dry, then we will  
5 wet the cloth with some distilled water first and then hold  
6 it on the blood until it soaks it up and then put it in the  
7 dish and then label it and send it to the lab.

8 Q. Did you find blood in various other parts of  
9 the Ford Explorer?

10 A. Yes, sir.

11 Q. Where was that?

12 A. There's some on the inside back door window on  
13 the -- it's on the -- just behind the driver. There's some  
14 more that's on the back door on the passenger side.

15 Q. Let me show you State Exhibits 155 and 156.  
16 Does that show the area where that blood evidence was?

17 A. Yes, sir. That's the back door on the  
18 passenger side and just above the armrest you can see a  
19 little spot. That's some blood right there.

20 Q. Okay. Is that a closer view?

21 A. That's another view of that same spot.

22 Q. All right. State Exhibit 158?

23 A. That's the handle that's above that and it's  
24 got some blood on it.

25 Q. Okay. And then 157, what do we see here?

1           A.       That's some blood on the inside back door  
2 window behind the driver.

3           Q.       Going back to the crime scene, there were two  
4 trailers that are parked side by side out there; is that  
5 right?

6           A.       Yes, sir.

7           Q.       Did you examine those and find some bullet  
8 damage?

9           A.       Yes, sir, I did.

10          Q.       How many times did it appear the trailer had  
11 been struck?

12          A.       Three times.

13          Q.       Let me show you State Exhibit 159. Does that  
14 show the trailer that was struck?

15          A.       Yes, it does.

16          Q.       Is that Officer Hawkins' car there underneath  
17 the trailer?

18          A.       It is.

19          Q.       What areas of the trailer were struck by  
20 bullets?

21          A.       Near that No. 2 on the left-hand side, there's  
22 a bullet hole down there. And then if you count up like  
23 four seams from the bottom where you can see those lines,  
24 there's another bullet hole and then one that's up high, all  
25 of them on the left-hand side of that trailer, that door.

1 Q. No. 160, does that show the bottom view of the  
2 one --

3 A. Yes, sir. This is the one near the No. 2.

4 Q. No. 161 actually shows a closeup of that?

5 A. Yes, it does. That's the hole there.

6 Q. This area here?

7 A. Yes, sir.

8 Q. Then State Exhibit 163?

9 A. This is showing the one in the hinge that was  
10 about four seams up.

11 Q. And then 164, is this taken inside the  
12 trailer?

13 A. It is. Where that letter R is, there's a  
14 bullet hole down there and, like I say, if you count up  
15 about four seams on the right-hand side now, you can see a  
16 bullet hole, a bullet comes through that behind that hinge  
17 and then there's one on up above that.

18 Q. And 165, does that show the bullet coming into  
19 the trailer?

20 A. Yes, sir, that's the bullet hole.

21 Q. Did you also examine the area against the  
22 Oshman's where you thought some bullet damage might have  
23 occurred between the trash compactor and the trailer?

24 A. Yes, sir.

25 Q. State Exhibit 170, that shows the area -- this

1 would be the area where you think the cars had gone into  
2 after the collision; is that right?

3 A. Yes, sir. This is -- when you saw both go  
4 forward, this is where they would have been headed to.

5 Q. Looks to be some type of chalk or arrow  
6 pointing down to this area. What is that?

7 A. That's pointing at an impact place from the  
8 bullet.

9 Q. Okay. State Exhibit 172?

10 A. That's a closer up view of it.

11 Q. Okay. And then State Exhibit 171?

12 A. That's another view of it.

13 Q. How many times did it appear that wall may  
14 have been impacted?

15 A. Twice.

16 Q. Now, you said that you collected bullet  
17 fragments throughout the crime scene; is that right?

18 A. Yes, sir.

19 THE COURT: Mr. Shook, it's 3:15. We  
20 need to take our afternoon break. The first one this  
21 afternoon was not a break. I need to go. We'll take 20  
22 minutes at this point and let him look through that box and  
23 we'll have you back in 20 minutes.

24 [Jury out]

25 [Recess]

1 [Jury in]

2 THE COURT: Thank you, you may be seated.

3 Mr. Shook?

4 Q. (By Mr. Shook) You recovered various bullet  
5 fragments inside Officer Hawkins' car as well as from the  
6 Ford Explorer and then around the crime scene; is that  
7 right?

8 A. Yes, sir.

9 Q. Let me show you what has been marked as State  
10 Exhibit 759. Again, is this a diagram similar to the  
11 diagram the jury has already seen, but has notations of  
12 where you recovered various bullet fragments along with  
13 State exhibit markers on them?

14 A. Yes, sir.

15 Q. And does it also include evidence recovered  
16 from the Ford Explorer?

17 A. It does.

18 Q. And would it help you explain your testimony  
19 to the jury?

20 A. It would.

21 MR. SHOOK: We'll offer State Exhibit  
22 759.

23 MR. SANCHEZ: No objection, Your Honor.

24 THE COURT: No. 759 shall be admitted.

25 Q. (By Mr. Shook) Again, this is the same layout



1 of the diagram the jury has already seen; is that right?

2 A. Yes, sir.

3 Q. There are different color-coded exhibit  
4 markers which correspond with some of the exhibits which are  
5 about to come into evidence?

6 A. Yes, sir.

7 Q. Let me first show you what has been marked as  
8 State Exhibit 182, an envelope which contains a canister.  
9 Is this the bullet fragment that you recovered from behind  
10 the speedometer of Officer Hawkins' squad car?

11 A. Yes, sir, it is.

12 Q. If I could just have you step down with the  
13 Court's permission to kind of take that bullet fragment out  
14 and explain to the jury.

15 THE COURT: Did you say 182?

16 MR. SHOOK: No. 182.

17 THE COURT: No. 182 is not in evidence.

18 MR. SHOOK: Let me offer No. 182 at this  
19 time.

20 MR. SANCHEZ: Your Honor, we just object  
21 to improper foundation as to this exhibit.

22 THE COURT: Overruled. No. 182 shall be  
23 admitted.

24 MR. SHOOK: Could I have the witness step  
25 down for a moment?

1 THE COURT: You may.

2 Q. (By Mr. Shook) Can you explain to the jury,  
3 this is the projectile that was taken from behind the  
4 dashboard; is that right?

5 A. Yes, sir.

6 Q. It's located here on the diagram as 182; is  
7 that right?

8 A. Yes, it is.

9 Q. What are we seeing there?

10 A. This is the lead projectile that was recovered  
11 from the dash. It's the lead part of the bullet.

12 Q. And when you recover these from a crime scene  
13 such as this, you submit them to the lab; is that right?

14 A. Yes, sir.

15 Q. What is the purpose in doing that?

16 A. Sometimes there's some striations or marks  
17 left on the projectile that you can later match through a  
18 particular weapon.

19 Q. And that was your purpose in submitting those  
20 to the lab?

21 A. Yes, sir.

22 Q. You don't conduct that particular test, do  
23 you?

24 A. No, sir.

25 Q. There's a firearm expert at the lab that does

1 that?

2 A. Yes, sir.

3 Q. State Exhibit 178 is the revolver you  
4 recovered from the crime scene?

5 A. Yes, sir, it is.

6 Q. You have already testified that there were  
7 several rounds of ammunition left, five live rounds of  
8 ammunition, in it; is that right?

9 A. Yes, sir, there was.

10 Q. Let me show you what has been marked as State  
11 Exhibit 183. Does that appear to contain the ammunition  
12 that was recovered from 178?

13 A. It does.

14 MR. SHOOK: We'll offer State Exhibit  
15 183.

16 MR. SANCHEZ: No objection, Your Honor.

17 THE COURT: No. 183 shall be admitted.

18 Q. (By Mr. Shook) Let me show you a package that  
19 has been marked State Exhibit 184 which contains three  
20 canisters which would have been marked State Exhibit 488 and  
21 184-A and 184-B.

22 A. Yes, sir.

23 Q. Are those all bullet fragments that you  
24 recovered from the crime scene?

25 A. Nos. 184-A and B are bullet fragments. No.

1 488 are two spent shell casings.

2 Q. Okay. Let's talk about 184-A and 184-B. Are  
3 they bullet fragments recovered from the crime scene?

4 A. Yes, sir.

5 Q. What portion of the crime scene?

6 A. From the driver's door of the Ford Explorer.

7 Q. Okay.

8 MR. SHOOK: Your Honor, at this time I'll  
9 offer 184-A and 184-B and 184.

10 MR. SANCHEZ: No objection.

11 THE COURT: No. 184, which is the  
12 package; is that correct?

13 MR. SHOOK: Yes, sir.

14 THE COURT: No. 184-A and 184-B shall be  
15 admitted.

16 Q. (By Mr. Shook) No. 184-A and B were bullet  
17 fragments recovered from the actual door of the Ford  
18 Explorer?

19 A. Yes, sir.

20 Q. And then 488, you said two spent rounds that  
21 are found inside the Explorer?

22 A. Yes, sir.

23 Q. Where were they found in the Explorer?

24 A. These are under the back seat on the driver's  
25 side of the Ford Explorer.

1 MR. SHOOK: We'll offer State Exhibit  
2 488.

3 MR. SANCHEZ: No objection.

4 THE COURT: No. 488 shall be admitted.

5 MR. SHOOK: May he step down to  
6 demonstrate this piece of evidence?

7 THE COURT: He may.

8 Q. (By Mr. Shook) Mr. Hazard, these are spent  
9 shell casings?

10 A. Yes, sir.

11 Q. Explain to the jury what we see there.

12 A. This is the bullets after they've been fired.  
13 The shell casings are left behind. The bullets -- the lead  
14 part is missing from inside and the powder, also. You can  
15 see on the end where the primer has been struck. That  
16 ignites the powder and sends the bullet out.

17 Q. If someone were going to reload a revolver,  
18 such as you see in State Exhibit 178, how would they do  
19 that?

20 A. If -- to reload it?

21 Q. Yes, sir, unload it and reload it.

22 A. Okay. This cylinder would normally be closed,  
23 if it's loaded. The cylinder would be closed. It's been  
24 made safe for the court with this plastic through there so  
25 I'm not able to do it.

1 But if it was loaded or if you wanted to  
2 unload it and load it again, you would first push this side  
3 button and this allows the cylinder to swing out and then  
4 that allows you to get to the shell casings. It has an  
5 ejector rod, this is the ejector rod, that pulls the shell  
6 casings out. And then you are able to take them out or drop  
7 them and then you are able to reload it, put new ones in,  
8 close this back up, and you are ready to fire it.

9 Q. And these would be the rounds after they were  
10 spent. If you were to take them out of the revolver, this  
11 is how they would be?

12 A. Yes, sir.

13 Q. And, again, what type of ammunition are these?

14 A. .357s.

15 Q. Okay. Let me show you an envelope which is  
16 marked State Exhibit 185 and show you four canisters which  
17 have been marked State Exhibits 185-A through D.

18 A. Yes, sir.

19 Q. Do you recognize those?

20 A. Yes, sir.

21 Q. Are these bullet fragments that you collected  
22 from the crime scene?

23 A. Yes, they are.

24 Q. And are they reflected here on State Exhibit  
25 759?

1 A. They are, 185, here's A, B, C, and D.

2 Q. So they were found outside the car in various  
3 parts of the parking lot?

4 A. Yes, sir. In the parking lot, parking lot,  
5 185-C is in the wall of the trailer and D is also just  
6 laying in the parking lot.

7 MR. SHOOK: Your Honor, at this time we  
8 offer the envelope, 185, along with State Exhibits 185-A  
9 through D.

10 MR. SANCHEZ: No objection.

11 THE COURT: Nos. 185, 185-A through D,  
12 shall be admitted.

13 Q. (By Mr. Shook) Let me show you an envelope  
14 which has been marked State Exhibit 186 and ask you if you  
15 can identify three canisters which have been marked 186-A,  
16 186-B, and 186-C.

17 A. Yes, sir.

18 Q. Again, are those bullet fragments that you  
19 recovered from the scene?

20 A. Yes, sir. They are from the squad car. No.  
21 185-A (sic) was from the right front seat; 185-B (sic) is  
22 from the right rear floorboard; 186-C is from the computer.

23 Q. This is all 186?

24 A. Yes, sir.

25 Q. So it's 186 is the envelope and the fragments

1 are 186 -

2 A. A, B, C.

3 Q. A, B, C?

4 A. Yes, sir.

5 MR. SHOOK: Your Honor, at this time we  
6 offer State Exhibits 186 and 186-A through C.

7 MR. SANCHEZ: No objection.

8 THE COURT: Nos. 186, 186-A through C  
9 shall be admitted.

10 Q. (By Mr. Shook) While I have you up here,  
11 Officer Hazard, let me show you an envelope marked 486 which  
12 contains one canister marked 486-A. Is that a bullet  
13 fragment which was recovered from the crime scene?

14 A. Yes, sir.

15 MR. SHOOK: Your Honor, at this time we  
16 offer 486 and 486-A.

17 MR. SANCHEZ: No objection.

18 THE COURT: Nos. 486 and 486-A shall be  
19 admitted.

20 Q. (By Mr. Shook) Let me show you an envelope  
21 marked State Exhibit 484, which contains seven canisters  
22 marked 484-A through G.

23 A. Uh-huh.

24 Q. I believe, hold on. Nos. 484-A through 484-G;  
25 is that correct?



1 A. Yes, sir.

2 Q. Are they all bullet fragments recovered from  
3 the crime scene?

4 A. They are.

5 MR. SHOOK: Your Honor, at this time we  
6 offer State Exhibit 484 and 484-A through G.

7 MR. SANCHEZ: No objections.

8 THE COURT: Nos. 484 and 484-A through G  
9 shall be admitted.

10 Q. (By Mr. Shook) Finally, Officer Hazard, let  
11 me show you State Exhibit 485, an envelope which contains  
12 three canisters marked 485-A through C. Are these also  
13 fragments recovered from the crime scene?

14 A. Yes, sir, they are.

15 MR. SHOOK: Your Honor, at this time we  
16 offer 485 and 485-A through C.

17 MR. SANCHEZ: No objection.

18 THE COURT: Nos. 485 and 485-A through C  
19 shall be admitted.

20 Q. (By Mr. Shook) Let me show you State Exhibit  
21 180. We saw this in a photograph earlier. Is this the  
22 screwdriver that was recovered from the back of the  
23 Oshman's?

24 A. Yes, it is.

25 MR. SHOOK: We'll offer 180 for all

1 purposes.

2 MR. SANCHEZ: No objection, Your Honor.

3 THE COURT: No. 180 shall be admitted.

4 Q. (By Mr. Shook) Inside the Oshman's did you  
5 recover some evidence near the back door?

6 A. Yes, sir.

7 Q. Let me show you State Exhibit 487. Is this  
8 the evidence that you recovered?

9 A. Yes, it is.

10 Q. What exactly is that?

11 A. It's a smoke grenade.

12 Q. And where was it sitting?

13 A. It was sitting on some boxes right by the back  
14 door.

15 Q The back door here where you come out the  
16 Oshman's?

17 A. Yes, sir. There's two back doors. The one  
18 that you would most likely use would be this one because  
19 it's a direct. This one you have to go through the  
20 warehouse. It's near this one.

21 Q. Okay.

22 MR. SHOOK: Your Honor, at this time we  
23 offer State Exhibit 487.

24 MR. SANCHEZ: No objection, Your Honor.

25 THE COURT: No. 487 shall be admitted.

1 Q. (By Mr. Shook) That is a smoke grenade?

2 A. Yes, sir.

3 Q. And it was just sitting on top of some boxes?

4 A. Yes, sir.

5 MR. SHOOK: That's all the questions we  
6 have. We'll pass the witness.

7 CROSS-EXAMINATION

8 BY MR. SANCHEZ:

9 Q. Officer, how many times did you have to watch  
10 that tape from the used car lot in order to determine the  
11 times and the actual cars that you saw?

12 A. That would be hard to say how many times.

13 Q. More than once?

14 A. Oh, yes, yes, a lot more than once. I've  
15 watched it, like I say, numerous times, and I have watched  
16 it frame by frame also, where we looked at each frame.

17 Q. And did you have to stop each frame and  
18 sometimes blow it up to make sure what you were seeing in  
19 that frame or was it always in that videotape?

20 A. Well, it's always on the tape as you see it.  
21 I don't know when you say blow it up, this is as blown up as  
22 you will see it here, you know.

23 Q. Is there any way that you can magnify it to  
24 get a better picture of what's in that video?

25 A. I sent it to the FBI in Quantico to see if

1 they could do anything with it and that's the best they  
2 could do is what we're seeing now.

3 Q. And based on what you saw on that video,  
4 that's how you were able to determine which cars were  
5 present at which time; is that correct?

6 A. Yes, sir.

7 Q. And in your detailed viewing of that video,  
8 did you ever see more than those two cars?

9 A. You see the cars come and go up the street,  
10 you know, just normal traffic. That's not a very, very used  
11 street, but it does have some traffic on it. So you do see  
12 cars come and go. But during this time, that's only two  
13 cars you will see.

14 Q. You didn't see a third car come up to that  
15 back area and stop or do anything? You just saw a Ford  
16 Explorer and you saw a police squad; is that correct?

17 A. Yes, sir.

18 Q. And from looking at that video, you really  
19 couldn't tell who was driving, who was in the car, or  
20 whether anybody was even there, just from looking at the  
21 video, correct?

22 A. You can't make out any persons at all.

23 Q. But, again, you did establish that the  
24 Explorer came around first and parked and then almost  
25 anywhere from between a minute and a half to two minutes is

1 when the police squad car came by and parked?

2 A. I would have to look at the times, but that's  
3 close.

4 MR. SANCHEZ: I pass the witness, Your  
5 Honor.

6 REDIRECT EXAMINATION

7 BY MR. SHOOK:

8 Q. Officer Hazard, you couldn't blow it up frame  
9 by frame, is that right, the tape that we saw?

10 A. No, sir.

11 Q. It's not like CSI that we see on TV where you  
12 can develop very close and accurate pictures from the film  
13 that you receive?

14 A. No. Well, first I took it to the ATF and then  
15 I sent it to the FBI to see what they can do with it and  
16 that's the best we got back. All I could tell that they did  
17 is they slowed it down for us a little bit on that second  
18 viewing.

19 Q. And the yellow tape that's on the pistol, is  
20 that yellow tape that was on the pistol when it was  
21 recovered?

22 A. Yes, sir.

23 Q. You didn't put it there or any other officers?

24 A. No. That's the way it was found.

25 MR. SHOOK: That's all we have.

1 MR. SANCHEZ: I have nothing further,  
2 Your Honor.

3 THE COURT: Thank you, Officer, you may  
4 stand down.

5 MR. SHOOK: Call Officer Chism.

6 CURTIS CHISM,  
7 having been duly sworn, was examined and testified as  
8 follows:

9 DIRECT EXAMINATION

10 BY MR. SHOOK:

11 Q. Would you tell us your name, please.

12 A. Curtis Chism.

13 Q. And how are you employed, sir?

14 A. I'm a police officer with the City of Irving.

15 Q. And what division are you assigned?

16 A. The Criminalistic Section and the Crime Scene  
17 Unit.

18 Q. How long have you been in that particular  
19 division?

20 A. Eighteen years.

21 Q. Could you tell the jury some of the training  
22 you have had for the position that you hold there?

23 A. The department sent me through numerous  
24 schools sponsored by the FBI, the Texas Department of Public  
25 Safety, the Sheriff's Office here, all related to everything

1 to do with evidence collection, photography, and  
2 fingerprint, fingerprint identification.

3 Q. Okay. Let me turn your attention to December  
4 24th of 2000. Were you called out to a crime scene at the  
5 Oshman's store?

6 A. Yes, sir, I was.

7 Q. What was your assignment out there?

8 A. To process that crime scene for any evidence.

9 Q. And did you and Officer Hazard work that crime  
10 scene together?

11 A. Yes, sir, we did.

12 Q. At some point during the evening did you leave  
13 the Oshman's crime scene and go to some apartments located  
14 behind the Oshman's?

15 A. Yes, sir.

16 Q. And what was the reason you did that?

17 A. They had located the white Explorer that had  
18 belonged to the manager that had been taken.

19 Q. Let me show you some photographs which have  
20 been marked State Exhibits 760 through 771. Are these  
21 photographs of that Explorer and evidence recovered inside  
22 of it?

23 A. Yes, sir, they are.

24 MR. SHOOK: Your Honor, at this time we  
25 offer State Exhibits 760 through 771.

1 MR. SANCHEZ: We have no objection, Your  
2 Honor.

3 THE COURT: Nos. 760 through 771 shall be  
4 admitted.

5 Q. (By Mr. Shook) The photo we see on the  
6 monitor, is that the parking space that the Explorer was  
7 found?

8 A. Yes, sir.

9 Q. And State Exhibit 761 shows another angle of  
10 that?

11 A. Yes, sir.

12 Q. Did it appear that the passenger window at the  
13 front had been shot out?

14 A. Yes, sir, the right front window.

15 Q. Okay. Let me show you State Exhibit 762. Is  
16 this an overview of the apartments where the Ford Explorer  
17 was found?

18 A. Yes, sir, it is.

19 Q. These are the apartments that are located  
20 behind the Oshman's?

21 A. Correct.

22 Q. Okay. What part of the apartment complex was  
23 the Ford Explorer found?

24 A. In this photograph it's almost in the center  
25 right where you are pointing right there.



1 Q. This area right here?

2 A. Yes, sir.

3 Q. What would be -- let me show you State Exhibit  
4 764. This shows the apartments in correlation with the  
5 apartments and the Oshman's together?

6 A. Yes, sir.

7 Q. Can we see in this photograph if you were  
8 going to drive from behind the Oshman's to get to where that  
9 Ford Explorer was found, the route you would take?

10 A. Yes, sir, you can.

11 Q. And what's that?

12 A. You would leave the Oshman's about where you  
13 are at there on Willow Creek, follow the curve around back  
14 towards the east to the first red light right there. That  
15 would be Beltline Road. You would then turn right or to the  
16 south and the very next light south would be Pioneer which  
17 is right there. You turn right or back to the west and then  
18 there's an entrance to the complex right there.

19 Q. And then the Explorer was found somewhere in  
20 here?

21 A. Yes, sir.

22 Q. All right. Let me show you State Exhibit 765.  
23 What is that a photograph of?

24 A. That's a cartridge that was on the ground on  
25 the passenger side of the Explorer.

1 Q. And could you explain to the jury what a  
2 cartridge is?

3 A. A cartridge is basically what you hear is a  
4 bullet, an unfired bullet.

5 Q. Okay. And that was on the passenger side on  
6 the ground?

7 A. Yes, sir.

8 Q. And you collected that?

9 A. Yes, sir, I did.

10 Q. Let me show you State Exhibit 770. What do we  
11 see there?

12 A. That's another cartridge. It's actually in  
13 the seat back behind the right front, actually the right  
14 rear seat, shoved down between the seat cushion and the seat  
15 back.

16 Q. And State Exhibit 771?

17 A. Those are two .357 caliber shell casings or  
18 fired rounds.

19 Q. Okay. I believe Officer Hazard already  
20 testified to finding these. Was this the exact location  
21 they were found?

22 A. Yes, sir, it is.

23 Q. And then State Exhibit 767, does that show the  
24 window that was shot out?

25 A. Yes, sir.

1 Q. And 768 show the inside where the glass was  
2 found?

3 A. Yes, sir.

4 Q. Let me show you an envelope which has been  
5 marked State Exhibit 758. There's three canisters inside  
6 which have been marked 758-A, B, and C. Do you recognize  
7 those?

8 A. Yes, sir.

9 Q. No. 758-A, was that the live round that was  
10 found outside the Ford Explorer?

11 A. Yes, sir, it is.

12 Q. What type of bullet is that?

13 A. It's a .38 caliber, basically just a plain  
14 lead round.

15 Q. And then 758-B and C, where were those  
16 recovered?

17 A. Which one is this -- 758-B is another one,  
18 also a .38 round. It's a different manufacturer than A,  
19 but it was also on the ground on the passenger side of the  
20 Explorer. And 758-C is the one that was in the rear seat.

21 Q. Okay. So all three are live rounds found  
22 either inside the Explorer or the outside?

23 A. Correct.

24 MR. SHOOK: Your Honor, at this time we  
25 offer 758 along with 758-A through C.

1 MR. SANCHEZ: We have no objection.

2 THE COURT: Nos. 758 and 758-A through C  
3 shall be admitted.

4 Q. (By Mr. Shook) So there were two live rounds  
5 found outside?

6 A. Yes, sir.

7 Q. And this is .38 caliber ammunition?

8 A. Yes, sir, it is.

9 Q. Can .38 ammunition be fired in a .357  
10 revolver?

11 A. Yes, sir.

12 MR. SHOOK: We'll pass the witness.

13 MR. SANCHEZ: We have no questions of  
14 this officer, Your Honor.

15 THE COURT: Officer Chism, that will do  
16 it for today for you. May this witness be excused?

17 MR. SHOOK: Yes, sir, Your Honor.

18 MR. SANCHEZ: No objection.

19 THE COURT: Members of the jury, I told  
20 you all we try to quit between 4:30 and 5:00. We never know  
21 how long to schedule witnesses for. We're through early  
22 today. I trust we have no complaints on your end. We could  
23 very well be in trial until 5:00, but we're to 4:00 today.

24 I know I told you I'm going to sound like  
25 a broken record, but I'm going to do it again. It doesn't

1 take a rocket scientist to figure out there has been media  
2 coverage of this trial. Do not, do not, don't watch the  
3 evening news, any channels. Don't read the newspaper.  
4 Don't look at the Internet. As far as the rest of your  
5 life, this is a short trial. You can do all these things  
6 after the fact. Okay?

7 Everything you learn about this case  
8 comes from where? Right there. Because, as you know, the  
9 media, they will take an entire day of testimony. We had  
10 six hours of testimony today and they will reduce that to a  
11 30-second, maybe 40 or 45-second sound bite and that's after  
12 the editors get through with it. The same with the  
13 newspaper. Don't read it. Don't allow anyone to tell you  
14 about it.

15 You will get the same instruction every  
16 day. That's exactly what I mean. That allows you to go  
17 about your business this afternoon, go to the office or work  
18 or wherever you go.

19 Tomorrow morning, I know you were here  
20 early. First day as always we like to get started. We will  
21 be here tomorrow morning at 9:00. So whatever time the  
22 Sheriff has you arrive to be in the jury room ready to go to  
23 work at 9:00, that would be between you and the Sheriff.  
24 Fair enough? Very good.

25 We'll see you tomorrow morning ready to

1 go to work at 9:00 a.m.

2 [Jury out]

3 THE COURT: Let the record reflect the  
4 jury has retired at approximately 4:05 this afternoon. The  
5 defense has made a motion for continuance this morning at  
6 8:30 a.m. saying news articles have been published by the  
7 Dallas Morning News and the Ft. Worth Star Telegram.

8 The motion was denied. But I instructed  
9 the counsel we would have a hearing on her issue of the gag  
10 order that was in place in this trial. And do you have some  
11 testimony which is to be considered at this time?

12 MS. BUSBEE: Yes, sir, Your Honor, but  
13 could I just make a preface statement by asking the Court to  
14 take judicial notice of the Order that was filed in this  
15 case and I suppose -- I'm not quite sure of the number of  
16 indictment, every case that was filed against the Texas  
17 Seven contains a gag order which was served upon us and it  
18 was signed and ordered by the previous Judge of this Court.  
19 We had a hearing on February 2nd, 2001, and it looks like it  
20 was signed on the 8th of February of 2001.

21 And can the Court take judicial knowledge  
22 of that order and state for the record that that is an Order  
23 that applies to this litigation?

24 THE COURT: This is correct. The Court  
25 will take judicial notice. It's a filed document.

1 MS. BUSBEE: The Court is aware and I  
2 attached my motion for continuance, copies of two newspaper  
3 articles, one dated the 9th and one dated the 10th, which is  
4 today. I would like to call the two reporters to the  
5 witness stand for the purpose of questions concerning these  
6 two articles at this point.

7 THE COURT: Call your first witness.

8 MS. BUSBEE: Call Mr. Lee.

9 MR. WILLIAMS: Your Honor, may I be heard  
10 on this?

11 THE COURT: Yes, sir. Please state your  
12 name and bar number for the Court Reporter.

13 MR. WILLIAMS: Yes, sir. Your Honor, my  
14 name is Tom Williams. My state bar number is 21578500. I  
15 represent Mike Lee and the Ft. Worth Star Telegram.

16 Your Honor, earlier today the defense had  
17 Mr. Lee served with a subpoena to appear in stanter in this  
18 case, I gather for this hearing now. He is outside in the  
19 hall.

20 But, Your Honor, on behalf of Mr. Lee, we  
21 would move to quash the subpoena. There's been no showing  
22 he knows anything that is relevant to this case. And to put  
23 Mr. Lee, who is the Ft. Worth Star Telegram reporter who has  
24 been regularly covering this case, under a subpoena in a  
25 case in which the Rule has been invoked serves no purpose,

1 except to disrupt the normal process of the Ft. Worth Star  
2 Telegram, and we have to get somebody else here.

3 I don't think there's been any suggestion  
4 that he has anything to say about the facts of the case. I  
5 gather there may be an issue about whether something that  
6 was said to him by someone else might possibly violate one  
7 of the Court's previous orders. It seems to me, Your Honor,  
8 to the extent the newspaper article itself is relevant to  
9 the defense motion -- by the way, I'm not too sure what  
10 motion it is we're hearing, for that matter. I understand  
11 you denied the continuance, which I think is the only motion  
12 I've heard reference to.

13 THE COURT: Let me bring you up to speed.  
14 This morning she moved for sanctions on parties that  
15 violated the gag order and to quash the jury panel as being  
16 tainted by said violation of the gag order, which was  
17 disseminated through the media. Is that accurate,  
18 ms. Busbee?

19 MS. BUSBEE: Yes, sir, Your Honor. And I  
20 might add that with the Court's permission, I intend to  
21 inquire as to whether or not other statements have been made  
22 that may pop up in the newspaper at some point for the  
23 purpose of determining whether or not sequestration would be  
24 a remedy that would need to be done.

25 I know that we can't stop them from



1 printing what has been told to them, but if the gag order  
2 has been violated and we continue to hear these -- read  
3 things in the newspaper, the gag order itself and the  
4 findings of the Court indicate that the risk of taint and  
5 prejudice and unfair process is too great to take that risk.

6 So that's really -- the continuance was  
7 simply to have more information to make these oral motions  
8 I'm making now.

9 MR. WILLIAMS: Your Honor, I appreciate  
10 that. Of course, those motions were made when I was not  
11 here, so I appreciate that.

12 Let me speak to both of those. As far as  
13 a motion to quash the jury panel, the only thing the jury  
14 panel might -- or the jurors might have seen are the  
15 articles themselves as published. A newspaper article is  
16 self-authenticating and we don't need a newspaper reporter  
17 to come in and prove it up. If there is some issue about  
18 whether a juror did or did not see an article, we don't need  
19 Mr. Lee's testimony on that point. He has nothing to add to  
20 that, other than the article itself which can come into  
21 evidence under the rules of evidence as a  
22 self-authenticating article.

23 As far as the issue of some sanction,  
24 first of all, it would seem to me that that is a completely  
25 separate proceeding. And I object to Mr. Lee being

1 subpoenaed in this trial, subjecting him to the invocation  
2 of the Rule and precluding him from covering the remainder  
3 of this trial.

4 MS. BUSBEE: He's not subjected to the  
5 Rule. That was not the intention of anybody. So if we  
6 could make that clear. Nobody wanted to bar him from the  
7 courtroom. We wanted him to come here and tell us about  
8 what he had been told. It has nothing to do with the facts  
9 of this particular litigation.

10 MR. WILLIAMS: Well, if it has nothing to  
11 do with the facts of this particular litigation, he doesn't  
12 need to be a witness in this litigation. That's my point.  
13 That is the only litigation he's been subpoenaed in.

14 Now, if they want to go file some  
15 grievance or do something else or a separate contempt  
16 proceeding, maybe in another form, we can argue about that.

17 MS. BUSBEE: Which we would do, if we had  
18 a continuance. I'm just trying to keep this as fair and  
19 above board as I can. And we're in the trial. We argued  
20 about this after the fact. The damage is done. Excuse me,  
21 I think I may have spoken out of turn.

22 THE COURT: You're trying to make your  
23 points and we're all trying to understand the law and what  
24 we're doing.

25 The bottom line, if I understand it

1 correctly, is that the defense wants to know who Mr. Lee  
2 talked to in preparation for his article; is that correct?  
3 Number one.

4 MS. BUSBEE: Yes, sir.

5 THE COURT: And number two is what else  
6 might be out there that he gained as a result of a potential  
7 violation of the gag order?

8 MS. BUSBEE: And -- right. If we  
9 discover that, that's for the Court to determine what the  
10 proper sanction is. I think it's incumbent upon me to  
11 inquire right now while we're in the middle of trial before  
12 other -- it is not the fault of the news gathering  
13 organization that someone violated the gag order. They are  
14 not, in my way of thinking, in trouble.

15 But there's been a statement, certainly  
16 in Mr. Lee's article, where he says that people have made  
17 statements that I believe violate the gag order and I would  
18 like to have -- I don't know that what is said in the  
19 newspaper makes it admissible in court. I think you have to  
20 hear it from Mr. Lee.

21 THE COURT: No, it's self-authenticated.  
22 You have already admitted it in your motion. So it's before  
23 the Court, as far as the record.

24 Mr. Williams, let me put on my First  
25 Amendment hat. I've been down this road before, but it was

1 several years ago. Am I correct that -- explain to me the  
2 law as to whether or not a reporter must divulge their  
3 source.

4 MR. WILLIAMS: Your Honor, in this case,  
5 as I understand, there are -- it's not an issue of a  
6 confidential source. It's an issue of a source that was in  
7 the paper. But even, even in this case, where at least, as  
8 I understand it having just found out about it this  
9 afternoon, there's no issue of a confidential source.

10 A reporter shall not be asked to divulge  
11 anything about the news gathering process until at least  
12 there's been some threshold showing of relevance, which  
13 really should be required for any witness.

14 But under Coleman versus State, Your  
15 Honor, I think there has got to be a threshold showing that  
16 the reporter and source that is to be -- or the information  
17 that is to be divulged really has some bearing on the  
18 outcome of this case. And the defense counsel has said it  
19 doesn't.

20 MS. BUSBEE: It has to do with the  
21 conducting of the case. It's ancillary, but it's definitely  
22 important in my way of thinking.

23 THE COURT: The relevance that you  
24 speak of under Coleman would be whether or not someone has  
25 violated the gag order.

1 MR. WILLIAMS: And Coleman is the  
2 applicable authority, Your Honor, that is correct.

3 THE COURT: So she's made the first  
4 hurdle. So speak to me about the second.

5 MR. WILLIAMS: Well, again, first, Your  
6 Honor, with all due respect, I don't agree she's made the  
7 first hurdle as to this case in which the subpoena has been  
8 issued. Some other day we have a different proceeding in a  
9 different form, that might be another argument.

10 But I will proceed, then, to the second  
11 hurdle which is, it seems to me, can the defense really make  
12 a showing that there is some critical evidence as to this  
13 issue, the gag order issue, which can be obtained only from  
14 Mr. Lee.

15 Now, as she has pointed out, if there's  
16 been a violation, it's been committed by someone who might  
17 have spoken to him and I think there are other ways to find  
18 that out, primarily from the people who supposedly talked to  
19 him.

20 MS. BUSBEE: People who are potentially  
21 going to be sanctioned are going to volunteer that  
22 information? This to me would be the obvious way to  
23 determine that.

24 MR. WILLIAMS: Your Honor, we are talking  
25 about officers of the Court here. It seems to me that there

1 initially should be some threshold showing that the defense  
2 has reason to believe a violation of the Order has occurred.

3 Now, certain communication with the press  
4 is perfectly all right, even under the strictest  
5 interpretation of the gag order. What time are court  
6 proceedings going to occur, things of that nature. I don't  
7 think that -- absent some showing that there's a reason to  
8 believe that a gag order has occurred and that the officers  
9 of the Court or the law enforcement officers or whoever is  
10 involved might not be candid with the Court about it, I  
11 don't think that we get to the second level of going to the  
12 reporter.

13 THE COURT: Ms. Busbee, let me clarify  
14 the complaint that you have. On page 2 of 3 of the Star  
15 article, I'll read it for the record. He writes, Mr. Lee  
16 writes, "Toby Shook, a Dallas County Assistant District  
17 Attorney, comma, said last week that the Texas law clearly  
18 allows Murphy to be executed. Period. Quote, "If you enter  
19 into a conspiracy to commit one crime and someone is killed,  
20 and everyone in the conspiracy can be found guilty," comma,  
21 end quote, of capital murder, he said. Is that the  
22 complaint that you have --

23 MS. BUSBEE: Yes, sir, one of two.

24 THE COURT: We'll deal with the first  
25 one, that one. And then the second complaint, I believe you

1 complained of the statement, page 3 of 3, "Jayne Hawkins,  
2 the dead officer's mother, comma, said Murphy had a role in  
3 her son's death even if he didn't fire a shot."

4 MS. BUSBEE: Doesn't she go on to say --

5 THE COURT: Yes. Then the second quote  
6 to her, her quote is, "His intent was obvious. Had he not  
7 alerted them, it's very probable Aubrey would not have been  
8 killed." She said, "You don't have to pull the trigger to  
9 kill somebody."

10 So those I'm just clarifying for the  
11 record, are the two quotes that you complained of?

12 MS. BUSBEE: Yes, sir, Your Honor, in  
13 this case.

14 THE COURT: All right. Now, let's just  
15 look at it intelligently. You said that you need to have an  
16 opportunity to develop the issues to determine two things,  
17 number one, whether we should have quashed this panel or B,  
18 at this point, cause a mistrial?

19 MS. BUSBEE: That's the drastic.

20 THE COURT: Or third option would be to  
21 sequester the jury from this point forward.

22 MS. BUSBEE: Yes, Your Honor.

23 THE COURT: The very first thing I asked  
24 this jury this morning before I swore them in, had anyone  
25 read anything since I instructed them both in writing or

1 orally in this courtroom on the 31st day of October, 2003.

2 Each juror answered in the negative.

3                   Bearing in mind the gag order, let's  
4 first talk to Mr. Shook's quote. Is that -- if it is  
5 attributable to him, is there anything that is inaccurate  
6 about the statement of the law that he provided?

7                   MS. BUSBEE: Judge, that's not my  
8 complaint. My complaint is that he's not supposed to make  
9 his comments. May I also add for the record, subsequent to  
10 filing my motion this morning, I had a discussion with  
11 Mr. Shook. Mr. Shook says he didn't say it as reported in  
12 the newspaper, which made me feel a lot better, because I  
13 couldn't imagine that he would do something so blatantly  
14 contrary to what the Court has said.

15                   But I didn't have any time, as we  
16 discussed, to conduct an investigation. So whether it is  
17 true or not is immaterial, as far as the concerns of the  
18 Court for the gag order and the violation.

19                   THE COURT: Yes. Now, let me clarify for  
20 the record before we get to the Morning News article.  
21 Mr. Thorpe asked me directly. I think he called me on the  
22 phone. My rulings have been with any media in any trial  
23 that we've concluded that the parties may visit with the  
24 media historically about the trials. It's public record.  
25 We've had testimony. And they can talk about it to the



1 extent of history.

2 I told Mr. Thorpe the same thing, that  
3 the parties cannot talk about the details and particulars of  
4 this case. I did not talk to Mr. Lee. I have E-mailed back  
5 and forth with him as to when we would begin trial. I  
6 haven't talked to Mr. Lee. I saw him here this morning, but  
7 I haven't talked to him in several months, I don't believe.

8 So there again, even if Mr. Shook -- even  
9 if he did say that, if it was attributable last week, Texas  
10 law, he's speaking of the law on that question.

11 So let's move on to Ms. Hawkins. Is she  
12 even covered by the gag order?

13 MS. BUSBEE: Yes, sir, she most  
14 definitely is.

15 THE COURT: I didn't issue the gag order.  
16 And she's been all over the news and TDCJ and Legislature  
17 and --

18 MS. BUSBEE: She hasn't said anything  
19 about Mr. Murphy that I'm aware of until I read it in the  
20 paper this morning because I was out of town yesterday.

21 THE COURT: Yes.

22 MS. BUSBEE: Yes, sir, she is most  
23 definitely covered by this gag order. And, Your Honor, if  
24 you would take a look at it, I believe the complained of  
25 statement that is attributed to Mr. Shook violates it as

1 well.

2 MR. SHOOK: Could I say something for the  
3 record?

4 THE COURT: Yes, sir, Mr. Shook. I  
5 wondered how long you were going to be quiet.

6 MR. SHOOK: Well, y'all were talking, so  
7 I didn't want to interrupt. The quote that is attributed to  
8 me in quotation marks, if you enter into a conspiracy to  
9 commit one crime and someone is killed, then everyone in the  
10 conspiracy can be found guilty, is a quote from me, but it  
11 was in regard to a question about the law of parties. And  
12 that's an accurate quote.

13 Now, the paragraph or the statement which  
14 is not in quotations directly preceding that quote says,  
15 Toby Shook, a Dallas County Assistant District Attorney,  
16 said last week that the Texas law clearly allows Murphy to  
17 be executed, I never said that to him. That's not a quote  
18 to me. It's not in quotation marks. And I never told him  
19 that.

20 My statement in that was in response to a  
21 general question regarding the law of parties, which he had  
22 asked me about, which I don't think violates the gag order.

23 And the other questions as has been in  
24 the past what the Court has already noted, talking to a  
25 reporter about procedures, what is going to happen, dates,

1 and then historical information is all I've discussed.

2 So the paragraph preceding is not  
3 accurate as to the purpose of my statement there.

4 THE COURT: As far as, let me just  
5 address that one issue. The quoted statement there, he said  
6 that to each juror 200 times in this courtroom.

7 MS. BUSBEE: Judge, you're talking about  
8 practicalities. I'm talking about something that's printed  
9 in the newspaper directly contrary to the orders of this  
10 Court. If he's misquoted, then that's the reason we had the  
11 gag order in the first place.

12 I've never been apprized that there was  
13 any easing up on this gag order. So as far as I'm  
14 concerned, the gag order in Mr. Murphy's case is the one  
15 that I was served with in February of 2001 which is you do  
16 not speak to the media at all, period.

17 This is the problem that you have. You  
18 give them an inch, it's their job to take a mile. And so  
19 whether this -- I don't know that this was a purposeful or  
20 who's wrong or who's right, but now we have something that  
21 violates the gag order.

22 And I'm asking the Court to address this  
23 and do something about this now before it gets any worse.

24 THE COURT: Well, I'll make a ruling  
25 without even talking to Mr. Lee. Mr. Shook did not violate

1 the gag order. He provided an accurate statement of the  
2 law, which could be applicable to any case.

3 Now, move on to Ms. Hawkins. What do you  
4 want me to do with her?

5 MS. BUSBEE: Of course, I asked you not  
6 to let her testify today. I would like for her not to be  
7 able to sit in this courtroom during this trial.

8 THE COURT: Granted.

9 MS. BUSBEE: Your Honor, what I would  
10 like to know and ask the Court to inquire of people that  
11 have written stories where they have talked to witnesses,  
12 whether or not we can expect other stories, as far as the  
13 Court would like to go or have me -- allow me to ask them if  
14 we can expect further reports and with quotes from people  
15 who are witnesses or participants in this trial, so that I  
16 may urge the Court to sequester the jury in this case.

17 THE COURT: Let me move on to  
18 Mr. Thorpe's article, the Dallas Morning News. Did you see  
19 any violations or any problems with his article?

20 MR. WATLER: May I approach? My name is  
21 Paul Watler.

22 THE COURT: That's fine. Let her ask the  
23 question first. You may not have to even say hello.

24 MR. WATLER: I just wanted to make my  
25 appearance that I'm here, since you were bringing up my

1 client.

2 MS. BUSBEE: Okay. Give me a second,  
3 Your Honor. Yes, sir, Your Honor. There's some things in  
4 here -- I actually have found out some things today about  
5 this article. But I would like to question as to who it was  
6 that informed him that we might be calling the codefendant  
7 as a witness. As you know, that was something that we were  
8 to keep to ourselves.

9 THE COURT: I was surprised to see that  
10 this morning in the newspaper, because I certainly haven't  
11 said a word to anybody that should not be aware of.

12 MS. BUSBEE: Right.

13 THE COURT: There again, I'm quite sure  
14 -- sir, now, this does speak to your source. I'm sorry, now  
15 you may introduce yourself. Please state your name and your  
16 bar card for the record.

17 MR. WATLER: Paul Watler, W-A-T-L-E-R,  
18 bar card No. 20913600. And I represent the Dallas Morning  
19 News and Mr. Thorpe.

20 And I did come in a little bit late  
21 during Mr. Williams' argument. But what I heard of  
22 Mr. Williams' argument, I would adopt and it was very well  
23 stated and I agree with the points.

24 THE COURT: Sounded good to you, didn't  
25 it?

1 MR. WATLER: It did. As usual, he was  
2 correct on the law.

3 THE COURT: The bottom line is I know I  
4 can't make a reporter give up their source. Whether it be  
5 accurate or not, he has reported it in good faith and I  
6 can't go any further than that, whether or not a witness  
7 will or will not testify.

8 Now, where is Mr. Lee?

9 MR. WILLIAMS: I think he's out in the  
10 hall.

11 THE COURT: Have him come in. Ms.  
12 Busbee, I can summarize your issues and complaints and  
13 arguments and motions. Bottom line is, if the Court feels a  
14 witness from this point forward -- with Ms. Hawkins, she's  
15 the mother. I can't do much with her. This -- if a witness  
16 violates the gag order, they will not be allowed to testify.

17 MS. BUSBEE: I appreciate that, Your  
18 Honor, thank you.

19 THE COURT: If something is published in  
20 the newspaper about their testimony, prospective,  
21 prospective, they won't be allowed to testify. That's why I  
22 want Mr. Lee to hear this and Mr. Thorpe. So that's just  
23 the way it will be for either side.

24 Mr. Shook, do you have any problem with  
25 that?

1 MR. SHOOK: Not at this time, Judge.

2 THE COURT: I mean, just -- we're going  
3 to try this case from the witness stand and not in the media  
4 which is the whole idea behind the gag order. You can  
5 report everything that goes on. I want you to report. You  
6 can have a front row seat for it. But we have to be careful  
7 that the media receives the correct information, the correct  
8 law, and Mr. Thorpe's comments to me, if I'm correct, Mr.  
9 Thorpe, is he wanted to be sure that -- his article was on  
10 the issue of parties and he wanted to be sure he wrote an  
11 accurate statement of the law and he was very diligent in  
12 his efforts to try to get his article to reflect a very good  
13 basic understanding of the law of parties, which I think is  
14 what Mr. Lee was trying to do.

15 As far as Ms. Hawkins, her testimony is  
16 going to be -- was the same in this trial as it was the  
17 previous trials. I don't see any harm there.

18 MS. BUSBEE: As you know, the harm is not  
19 in her testimony.

20 THE COURT: Yes.

21 MS. BUSBEE: It's in her extraneous  
22 remarks.

23 THE COURT: And that goes back to the  
24 very first question of the jury this morning, they have -- I  
25 drilled it into them, time and time and time again, they are

1 not to have any media exposure, period. If I even get a  
2 whiff that they have received inappropriate communications  
3 or read anything about this case, then I will sequester the  
4 jury.

5 MS. BUSBEE: It's just that, you know, we  
6 needed to talk about this after the reports the last two  
7 days. I appreciate your patience with us.

8 THE COURT: I have no problem. Anything  
9 else?

10 MS. BUSBEE: No, sir. We'll be here at  
11 9:00, unless something is published overnight, then we'll be  
12 here at 8:30.

13 MR. WILLIAMS: Your Honor, do I  
14 understand, then, that Mr. Lee is released from the subpoena  
15 and not covered by the Rule against witnesses?

16 THE COURT: Motion to quash both the  
17 subpoenas will be granted.

18 [End of Volume]  
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1 STATE OF TEXAS \*

2 COUNTY OF DALLAS \*

3 I, NANCY BREWER, Official Court Reporter for the 283rd  
4 Judicial District Court, do hereby certify that the above  
5 and foregoing constitutes a true and correct transcription  
6 of all portions of evidence and other proceedings requested  
7 in writing by counsel for the parties to be included in this  
8 volume of the Reporter's Record, in the above-styled and  
9 numbered cause, all of which occurred in open court or in  
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13  
14  
15 Nancy Brewer  
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17 Expiration Date: 12-31-04  
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REPORTER'S RECORD

VOLUME 42 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

JURY TRIAL

On the 11th day of November, 2003, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable Vickers L. Cunningham,  
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

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8	ST.417	PHOTO, RV&EVIDENCE	177	183	42
9	ST.418	PHOTO, RV&EVIDENCE	177	183	42
10	ST.419	PHOTO, RV&EVIDENCE	177	183	42
11	ST.420	PHOTO, RV&EVIDENCE	177	183	42
12	ST.421	PHOTO, RV&EVIDENCE	177	183	42
13	ST.422	PHOTO, RV&EVIDENCE	177	183	42
14	ST.423	PHOTO, RV&EVIDENCE	177	183	42
15	ST.424	PHOTO, RV&EVIDENCE	177	183	42
16	ST.425	PHOTO, RV&EVIDENCE	177	183	42
17	ST.426	PHOTO, RV&EVIDENCE	177	183	42
18	ST.427	PHOTO, RV&EVIDENCE	177	183	42
19	ST.428	PHOTO, RV&EVIDENCE	177	183	42
20	ST.429	PHOTO, RV&EVIDENCE	177	183	42
21	ST.430	PHOTO, RV&EVIDENCE	177	183	42
22	ST.431	PHOTO, RV&EVIDENCE	177	183	42
23	ST.432	PHOTO, RV&EVIDENCE	177	183	42
24	ST.433	PHOTO, RV&EVIDENCE	177	183	42
25	ST.434	PHOTO, RV&EVIDENCE	177	183	42

1	ST.435	PHOTO, RV&EVIDENCE	177	183	42
2	ST.436	PHOTO, RV&EVIDENCE	177	183	42
3	ST.437	PHOTO, RV&EVIDENCE	177	183	42
4	ST.438	PHOTO, RV&EVIDENCE	177	183	42
5	ST.439	PHOTO, RV&EVIDENCE	177	183	42
6	ST.440	PHOTO, RV&EVIDENCE	177	183	42
7	ST.441	PHOTO, RV&EVIDENCE	177	183	42
8	ST.442	PHOTO, RV&EVIDENCE	177	183	42
9	ST.443	PHOTO, RV&EVIDENCE	177	183	42
10	ST.444	PHOTO, RV&EVIDENCE	177	183	42
11	ST.445	PHOTO, RV&EVIDENCE	177	183	42
12	ST.446	PHOTO, RV&EVIDENCE	177	183	42
13	ST.447	PHOTO, RV&EVIDENCE	177	183	42
14	ST.448	PHOTO, RV&EVIDENCE	177	183	42
15	ST.449	PHOTO, RV&EVIDENCE	177	183	42
16	ST.450	PHOTO, RV&EVIDENCE	177	183	42
17	ST.451	PHOTO, RV&EVIDENCE	177	183	42
18	ST.452	PHOTO, RV&EVIDENCE	177	183	42
19	ST.453	PHOTO, RV&EVIDENCE	177	183	42
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21	ST.455	PHOTO, RV&EVIDENCE	177	183	42
22	ST.456	PHOTO, RV&EVIDENCE	177	183	42
23	ST.457	PHOTO, RV&EVIDENCE	177	183	42
24	ST.458	PHOTO, RV&EVIDENCE	177	183	42
25	ST.459	PHOTO, RV&EVIDENCE	177	183	42

1	ST.460	PHOTO, RV&EVIDENCE	177	183	42
2	ST.461	PHOTO, RV&EVIDENCE	177	183	42
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P R O C E E D I N G S

THE COURT: Thank you. Please have a seat. Mr. Shook, call your next witness.

MR. SHOOK: Call Dr. Barnard.

JEFFREY BARNARD,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHOOK:

Q. Would you tell us your name, please.

A. Jeffery Barnard, B-A-R-N-A-R-D.

Q. How are you employed, sir?

A. The Chief Medical Examiner for Dallas County and the Director for the Southwest Institute of Forensic Sciences.

Q. And what are your duties as the Chief Medical Examiner?

A. As the Chief Medical Examiner, I oversee the Medical Examiner Section, so I oversee the determination of the cause and manner of death in cases that come to the Medical Examiner's Office here in Dallas.

Q. Could you tell the jury your educational and professional background you have for the position that you hold?

A. I attended Texas A&M University and received a

1 bachelor of science of medicine degree. I attended Texas  
2 A&M University College of Medicine and received my MD  
3 degree.

4 I served a general surgery internship at  
5 Scott & White Hospital in Temple, Texas. Served a four-year  
6 combined anatomic and clinical pathology residence at Scott  
7 & White Hospital.

8 I served a one-year fellowship in  
9 forensic pathology at the Medical Examiner's office in  
10 Suffolk County, which is in Long Island, New York.

11 I'm board certificated in anatomic  
12 pathology, clinical pathology, and forensic pathology. I  
13 have a license to practice medicine in the State of Texas.  
14 And I've been licensed in New York as well. I'm a diplomate  
15 to the National Board of Medical Examiners.

16 As a resident on a part-time basis, I  
17 worked as an emergency room physician for five and a half  
18 years. I'm also the Director of the Autopsy Service at  
19 Parkland Hospital and I'm Professor of Pathology at U. T.  
20 Southwestern Medical School.

21 Q. Doctor, did you personally perform the autopsy  
22 on the body of Aubrey Hawkins on Christmas Day ,2000?

23 A. Yes.

24 Q. How many autopsies have you performed in the  
25 course of your career?

1           A.       Somewhere between 4,000 and 5,000, maybe even  
2 more than that.

3           Q.       Could you explain to the jury what an autopsy  
4 is.

5           A.       An autopsy is an external and internal  
6 examination of the body. The external examination is that  
7 part of the exam prior to making incisions in the body  
8 whereby any feature that characterizes that person that can  
9 be seen on the skin surface, that's the time that you  
10 identify that. Also any injuries which can be seen on the  
11 skin surface, that would be determined during the external  
12 examination.

13                   The internal examination is that part of  
14 the exam in which appropriate incisions are made in the  
15 body. The organs which reside within the body cavities are  
16 examined. Any sort of injury or natural disease process can  
17 be identified on the internal exam and then correlated with  
18 whatever is seen on the external examination.

19                   Fluids are removed for potential  
20 toxicologic examination. The organs are removed. They are  
21 examined again for any sort of injury or natural disease  
22 process. Small sections are taken. The remainder of the  
23 tissue and organs are placed back in the body for burial.

24           Q.       Each body that arrives there at your office,  
25 are they assigned a unique number?

1 A. Yes.

2 Q. Does that number stay with them throughout the  
3 process?

4 A. Yes.

5 Q. And are photographs taken of the wounds of the  
6 body?

7 A. When wounds are present, yes, sir.

8 Q. And does that unique number, is it always  
9 photographed with the wounds?

10 A. Yes.

11 Q. Let me show you some photographs which have  
12 been marked as State Exhibits 193 through 199 and 201  
13 through 208. Are those photographs of autopsy photos of  
14 Officer Hawkins' body as well as some of the clothing and  
15 material that you retrieved from the clothing from Officer  
16 Hawkins' autopsy?

17 A. Yes, sir, they are.

18 MR. SHOOK: Your Honor, at this time we  
19 will offer State Exhibits 193 through 199 and 201 through  
20 208.

21 MR. SANCHEZ: Let me take a quick look at  
22 them. We have no objection, Your Honor.

23 THE COURT: State Exhibits 193 through  
24 199, 201 through 208, shall be admitted.

25 Q. (By Mr. Shook) Doctor, is State Exhibit 490 a

1 photograph of personal items that accompanied the body to  
2 the Medical Examiner's Office?

3 A. Yes, that's correct.

4 MR. SHOOK: We'll offer State Exhibit  
5 490.

6 MR. SANCHEZ: We have no objection.

7 THE COURT: No. 490 shall be admitted.

8 Q. (By Mr. Shook) Doctor, let me show you a  
9 mannequin that has been marked State Exhibit 209. Is this a  
10 mannequin that you prepared yourself to demonstrate the  
11 various angles to bullets that struck Officer Hawkins' body?

12 A. Yes.

13 Q. The dowel rods that are placed in the  
14 mannequin, were they placed there by yourself?

15 A. Yes.

16 Q. And would that help you explain your testimony  
17 to the jury?

18 A. Yes.

19 MR. SHOOK: Your Honor, at this time we  
20 offer State Exhibit 209.

21 MR. SANCHEZ: No objection.

22 THE COURT: No. 209 shall be admitted.

23 Q. (By Mr. Shook) Let me ask you this first,  
24 Doctor, did you examine the clothing that accompanied the  
25 body?

1 A. Somewhat superficially, but, yes, I looked at  
2 it.

3 Q. Did you find anything of significance there?

4 A. Yes.

5 Q. What was that?

6 A. Well, I found a fragment of a bullet jacket on  
7 the shirt, the police shirt, and then I also found a bullet  
8 jacket loose within the clothing.

9 Q. Let me show you State Exhibit 193. Let me  
10 give you this laser and feel free to use that if you feel it  
11 necessary to help explain your testimony. What do we see  
12 there in State Exhibit 193?

13 A. No. 193 is a photograph that shows Officer  
14 Hawkins' shirt and that is where I'm putting the pointer is  
15 a fragment of bullet jacket that is -- has the identifying  
16 number under it.

17 Q. Did that appear to be a copper jacket?

18 A. Yes, sir, as best I could tell.

19 Q. All right. State Exhibit 194?

20 A. No. 194 is another photograph that shows the  
21 bullet jacket that I found loose within the clothing.

22 Q. Did you also examine the ballistic vest that  
23 accompanied the officer's body?

24 A. Yes, again, some superficially, but I did.

25 Q. Did you notice anything at that time?

1           A.       There appeared to be a couple of what I  
2 thought were defects in it.

3           Q.       What did you do with the vest after you did  
4 the 'superficial exam?

5           A.       Well, the vest was bagged and sealed and then  
6 turned over to the Criminal Investigation Laboratory.

7           Q.       Now, as part of your examination you conduct  
8 -- you measure the length of the body as well as the weight;  
9 is that right?

10          A.       Yes, sir, that's correct.

11          Q.       What were Officer Hawkins' length and weight?

12          A.       The body was 74 inches or six foot two and 203  
13 pounds.

14          Q.       What did your examination show as the types of  
15 injuries that were present on Officer Hawkins' body?

16          A.       Well, there were several different types of  
17 injury. Most dramatically there were 11 gunshot wounds, but  
18 there was also blunt force injuries and blunt force meaning  
19 not sharp force injuries. There were also some  
20 punctate-type abrasions or puncture-type wounds as well.

21          Q.       Now, as far as the gunshot wounds, when you  
22 are conducting an examination, do you number those for your  
23 examination?

24          A.       Yes, I numbered them in this case. You can  
25 use lettering, if you want. But it's some way to separate



1 out each wound from another wound.

2 Q. In no way, you are not able to determine an  
3 order of the shots that were fired into the body. That's  
4 not what you do when you are numbering the wounds, is it?

5 A. That's correct.

6 MR. SHOOK: Could I have the witness step  
7 down, Your Honor?

8 THE COURT: Yes, sir.

9 Q. (By Mr. Shook) I want to show you the  
10 photographs and also allow you to use the mannequin to  
11 demonstrate the types of wounds and your examination of the  
12 body.

13 Gunshot wound No. 1, where was that  
14 located?

15 A. That was called No. 1, again, it's an  
16 arbitrary designation, was a gunshot wound which entered  
17 right at the left eyebrow region. And that can be seen on  
18 the mannequin with the dowel rod going in through the --  
19 excuse me, the left eyelid, eyebrow area.

20 No. 1 is the gunshot wound, as I said,  
21 that entered above the left eyebrow. That can be seen on  
22 the photograph that I'm pointing to the defect. The bullet,  
23 after it went through the left eyebrow area, went through  
24 the left eye.

25 As it went through the left eye, it

1 fractured the orbital plate and the orbital plate is that  
2 bone at the base of the skull that is above the left eye.  
3 And when it fractured the skull, then it caused a bruising  
4 of the undersurface of the left side of the brain as well as  
5 hemorrhage.

6 The bullet then went through the left  
7 maxillary sinus. It went through the soft palate which is  
8 that soft part of the upper roof of the mouth. It crossed  
9 over and went through the right side of the tongue and then  
10 it penetrated into the right side of the neck musculature.

11 Q. Let me show you State Exhibit 196. Does that  
12 show the path of the bullet as it traveled through the left  
13 eye?

14 A. Yes, sir. That shows the bruising of the  
15 upper and lower eyelid, as well as the injury to the left  
16 eye.

17 Q. Now, during the course of your examination,  
18 are you sometimes able to determine the range of fire?

19 A. There are times that you can, yes, sir.

20 Q. How are you able to do that?

21 A. Well, if a gun has been close enough to the  
22 body at the time of discharge, some of the components that  
23 exit the barrel can be seen on the skin surface. Not only  
24 does the bullet exit, but powder will exit and then some of  
25 that black smoke that sometimes you may have been able to

1 see on television, will also exit. And if the gun is close  
2 enough to the skin surface, some or all of those components  
3 can also be deposited on the skin surface. If the barrel  
4 tip is directly in contact with the skin, if it's in a very  
5 tight contact, the bullet, as well as the smoke or the -- we  
6 call it soot -- and the powder all blown into the wound. If  
7 it's much looser, some of that blackish soot material may be  
8 on the outer skin surface.

9 As you move the barrel tip farther away,  
10 the soot is less aerodynamically stable so it will  
11 eventually drop off and then the gun powder may carry as  
12 well as the bullet. So somewhere around three, three and a  
13 half feet, maybe four feet, depending on the type of power,  
14 you can get marking on the skin surface if it hits the skin  
15 out to that range. At some point you will move to a  
16 distance which the gunpowder is no longer stable  
17 aerodynamically and the only thing that you will see is the  
18 entrance wound into the skin.

19 Q. In particular on gunshot wound No. 1, did you  
20 see any evidence of stiffling, anything of that nature?

21 A. I saw no gunshot residue on the skin surface.

22 Q. Could you explain to the jury what an  
23 interposed target is?

24 A. An interposed target is a term that is used  
25 when the barrel tip and the target have some intervening or

1 separate object between them. It could be a windshield. It  
2 could be a door. It could be anything. Even clothing in a  
3 sense can be an interposed target.

4 Q. If Officer Hawkins were sitting in his squad  
5 car and he was struck by bullets that were passing through  
6 either his driver's side window or windshield, could that  
7 prevent stiffling from reaching his body?

8 A. Right. If a barrel tip or a gun was close  
9 enough that without that intervening target, it would  
10 deposit on the skin, then clearly a windshield or window  
11 could block that from reaching the skin surface.

12 Q. Let's go to gunshot wound No. 2. Where is  
13 that located?

14 A. Gunshot wound No. 2 is a gunshot wound that  
15 entered in the left ear. It exited the left ear lobe and  
16 then re-entered into the left side of the head, went through  
17 the neck musculature and exited out the back of the neck.  
18 And that can be seen in this diagram. There's a large  
19 defect and that is partially caused by gunshot wound No. 2.

20 Q. And we may want to turn the mannequin a  
21 little.

22 A. This dowel rod would be representing gunshot  
23 wound No. 2.

24 Q. Was there any evidence of stiffling on that  
25 particular wound?

1 A. No, sir.

2 Q. And gunshot wound No. 3?

3 A. Gunshot wound No. 3 is a gunshot wound that  
4 also entered in the same defect as gunshot wound No. 2,  
5 which is part of why that's kind of a large, irregular  
6 defect. The other is because of the fact that the ear is an  
7 irregular surface. But, nonetheless, two gunshot wounds  
8 entered into the left ear.

9 After the bullet exited the left ear,  
10 then it penetrated into what is called the mastoid scalp,  
11 which is just that scalp portion of the mastoid bone and a  
12 bullet was recovered there.

13 Q. The photograph that we see on the monitor,  
14 does that show the exit wound and then re-entry wounds?

15 A. Yes, sir. The photograph shows a large defect  
16 on the back part of the left ear. Those are exit defects.  
17 The lower -- there's a lower defect on the left side of the  
18 neck, which would be from gunshot wound No. 2. There is  
19 then a subsequent defect above that which is the re-entrance  
20 of gunshot wound No. 3.

21 Q. And that bullet or bullet fragment was  
22 actually recovered by you; is that correct?

23 A. Yes, sir, that's correct.

24 Q. When you recover these bullets, what do you do  
25 with them?

1           A.       I inscribe them if there's a surface that I  
2 would inscribe on that would not alter the ability for the  
3 firearms examiner to look at matching them up or if there's  
4 any rifling on it. And then I put them in a labeled  
5 envelope that I personally label. And then they are  
6 submitted to the crime lab.

7           Q.       Which is -- the crime lab is within your  
8 building, also; is that right?

9           A.       That's correct.

10          Q.       Now, gunshot wound No. 4?

11          A.       No. 4 is a gunshot wound which is kind of an  
12 irregular gunshot wound in the left --

13          Q.       Doctor, let me interrupt you here. I have --  
14 I got a little ahead of myself. Does 199 show that exit  
15 wound on No. 2?

16          A.       Yes, sir, it does. That's for gunshot wound  
17 No. 2.

18          Q.       Okay. You can by examining a wound, can you  
19 always tell which is the entrance and which is the exit?

20          A.       Not always, although based on experience and  
21 training and seeing a lot of gunshot wounds, most of the  
22 time you can. But there are times, especially in view of  
23 having some sort of interposed target, that the entrance  
24 wound may be just as irregular as the exit wound. But in  
25 general, the entrance wound tends to be a little more round,

1 a little more regular. It would have an abrasion  
2 frequently, whereas an exit wound may not. So in general I  
3 can tell, but occasionally you can't.

4 Q. And on this particular wound, you were  
5 confident that this is the actual exit?

6 A. No question about it. Furthermore, you see  
7 some tissue extruding through the back part. And that shows  
8 as the bullet passes through, the tissue will oftentimes  
9 help give you some directionality.

10 Q. Okay. Let me go back, then, to gunshot wound  
11 No. 4.

12 A. Yes, sir. Gunshot wound No. 4 is a gunshot  
13 wound in the left premaxilla, which is kind of the cheek  
14 area. That was a kind of an irregular wound that I  
15 recovered a bullet jacket just outside of the mucosa, the  
16 oral cavity. And that was kind of going in an anatomical  
17 position from a back-to-front direction. But it was, again,  
18 just a fragment of a jacket. And that would be seen on this  
19 photograph with the laser pointing to that defect.

20 Q. And gunshot wound No. 5?

21 A. No. 5 is a gunshot wound which was in the left  
22 cheek area. That bullet then entered into the left jaw and  
23 neck musculature and penetrated the left musculature where I  
24 recovered a bullet fragment there as well.

25 Q. Again, did you see any stiffling present on

1 any of those wounds?

2 A. No, sir.

3 Q. And then gunshot wound No. 6?

4 A. No. 6 is a very irregular wound, probably best  
5 seen initially on this photograph that involves the left  
6 cheek jaw area. It also has an area that's discontinuous  
7 with skin, that doesn't have any sort of abrasion. And then  
8 there's another abrasion and a defect.

9 And as you put the body separated like  
10 this, you have this kind of skip area of normal skin. If  
11 you approximate the chin and jaw together, it makes a  
12 continuous track. And so the bullet grazed the chin/jaw  
13 area and then hit the neck and went into the chest where the  
14 jacket appeared to separate and go into the pericardial  
15 area, the sac area surrounding the heart. The core or the  
16 nonjacketed portion then went through the upper lobe of the  
17 left lung and penetrated into the lower lobe of the left  
18 lung.

19 Q. Would that wound be consistent if Officer  
20 Hawkins' were ducking his head into his chest? Would it be  
21 consistent if the bullet were fired down on him in that  
22 manner?

23 A. Yes, sir. That would be reflected by this  
24 dowel rod.

25 Q. Okay. Now, we see some other wounds to the



1 face that seem to be smaller?

2 A. Yes, sir.

3 Q. What types of wounds are those?

4 A. These are punctate-type defects and they can  
5 be caused by fragments of glass, fragments of metal. I  
6 wasn't able to recover anything, although there may have  
7 been something very small that I couldn't find. But that's  
8 what it's consistent with and it's very consistent with an  
9 interposed target.

10 Q. If his window had been shot out and he was  
11 shot while sitting in the car, that would be consistent with  
12 the type of wounds he had received, if the glass were  
13 shattering?

14 A. Yes.

15 Q. All right. Gunshot wound No. 7, where was  
16 that located?

17 A. Gunshot wound No. 7 is a gunshot wound that  
18 entered in the left back. It went into the left chest  
19 cavity, went through the upper lobe of the left lung and  
20 went through the aorta, which is that large artery that  
21 comes out of the left side of the heart that gives blood to  
22 the rest of the body. Went through the aorta and penetrated  
23 into the right anterior chest muscle. That would be  
24 reflected with this dowel rod.

25 Q. And the direction again was what?

1           A.       That is back to front. It was going to go  
2 from left towards the right and upward.

3           Q.       Now, when you conduct an autopsy you can't  
4 tell exactly how the body was positioned when it was shot;  
5 is that right?

6           A.       Correct. You really can only get some idea of  
7 where the gun is aimed in relationship to the body, but you  
8 really can't tell, necessarily, what position the person  
9 shooting was in or what position, necessarily, the victim  
10 was in.

11          Q.       If Officer Hawkins were shot while in his  
12 squad car, would his body most likely have to be positioned  
13 over to achieve this particular shot?

14          A.       That certainly would be consistent with it,  
15 yes, sir.

16          Q.       Or could it also be achieved if he were drug  
17 from his squad car and placed on the ground face down and  
18 then someone fired down?

19          A.       That could work as well.

20          Q.       Now, there was clothing over this particular  
21 wound or that would be likely, if he was wearing his shirt;  
22 is that right?

23          A.       Yes, sir, that's correct.

24          Q.       In fact, for the mannequin you actually did  
25 use Officer Hawkins' actual shirt in lining up the wounds;

1 is that right?

2 A. Yes.

3 Q. Did you submit the clothing, the shirt, also,  
4 to the trace evidence examiner?

5 A. To the evidence registrar from the crime lab  
6 who then distributed it to the trace evidence examiner, yes,  
7 sir.

8 Q. And he would conduct examinations about range  
9 of fire and that sort of thing?

10 A. Yes. He would look for any sort of residue on  
11 the clothing.

12 Q. Okay. Then gunshot wound No. 8?

13 A. Gunshot wound No. 8 is a gunshot wound that  
14 went through the back part of the left upper arm. It went  
15 through the head of the humerus and then exited out the left  
16 shoulder area.

17 Q. Roughly the same angle as gunshot wound No. 7?

18 A. More or less.

19 Q. All right. And then gunshot wound No. 9?

20 A. Gunshot wound No. 9 is a gunshot wound -- is a  
21 gunshot wound that enters in the left forearm area on the  
22 little finger side on the palm side and that penetrated into  
23 the forearm muscles where a fragment was recovered.

24 Q. Okay. And then the next gunshot wound, No.  
25 10?

1           A.       No. 10 is a gunshot wound that had two defects  
2       that were connected. One was on the palm side of the thumb.  
3       The other was on the backside of the little finger. That  
4       track went through muscles, didn't go through any bone. But  
5       both wounds were irregular and I really couldn't tell by  
6       looking just at the wound itself which one was the entrance  
7       and which one was the exit.

8                       This photograph shows -- that's gunshot  
9       wound No. 9. That's one of the two defects of gunshot wound  
10      No. 10.

11           Q.       And then gunshot wound No. 11?

12           A.       Gunshot wound No. 11 is a gunshot wound that  
13      is what we call a graze wound. That was on the backside of  
14      the forearm and the thumb side. But based on looking at the  
15      wound and the way that some of the skin was altered, it  
16      appeared to give a trajectory that indicated to me that the  
17      bullet was coming from the inner aspect to the outer aspect  
18      and going from above downward.

19           Q.       Is that what we see in this particular  
20      photograph?

21           A.       Yes, sir. That would be this area.

22           Q.       Would those wounds to the arm be consistent  
23      with Officer Hawkins having his arm raised, if he were  
24      sitting in his squad car?

25           A.       Certainly could be.

1 Q. All right. Now, as far as your examination of  
2 the wounds, which of these particular gunshot wounds do you  
3 believe were fatal injuries?

4 A. Well, the fatal-type injuries or more rapidly  
5 fatal -- some of the others could be fatal, but I would call  
6 them potentially fatal. That is, if that was the only wound  
7 that somebody had, that there was no treatment, they could  
8 cause bleeding, they can cause infection, so they could be  
9 potentially fatal, but they wouldn't be rapidly fatal-type  
10 injuries.

11 Gunshot wound No. 1 that caused the  
12 injury to the brain, I would consider that to be a rapidly  
13 fatal injury. Gunshot wound No. 6 that went through the  
14 chin area, went through the left lung, that would be a  
15 rapidly fatal injury. Gunshot wound No. 7 is a gunshot  
16 wound that went through the aorta. That would be the most  
17 rapidly fatal injury of all of them.

18 And then the rest of them would be, if I  
19 remember correctly, would be all potentially fatal. For  
20 example No. 9, if it went through an artery in the humerus  
21 area, that could be a more rapidly fatal injury. But I did  
22 not identify that. It's sometimes hard to find.

23 Q. Talking about gunshot wound No. 7, the one  
24 that penetrated the back, you said was the most rapidly  
25 fatal?

1 A. Yes, sir.

2 Q. Why is that?

3 A. Well, because it's going through the aorta and  
4 the aorta is the large artery that provides oxygenated blood  
5 to the body. And it's, you know, like in the plumbing  
6 situation where you have a pipe with pressure on it and you  
7 punch a hole in it, then everything is going to go out that  
8 area because that now has the least resistance and that's  
9 the path it goes.

10 If you take an artery that is under  
11 pressure as the heart beats and you punch a hole in it,  
12 then when the heart contracts, the blood will go out that  
13 defect before it can get to the rest of the body.

14 Q. If Officer Hawkins, let's say hypothetically,  
15 had received that wound at or near an emergency room, do you  
16 feel that they could have saved him with that type of wound?

17 A. No.

18 Q. Now, you looked at some other wounds and  
19 abrasions; is that right?

20 A. Yes, sir.

21 Q. Let me show you a photograph of Officer  
22 Hawkins' chest which is 203.

23 A. Yes, sir.

24 Q. Let's talk about the one there that's as we  
25 look at the photograph on the right first, which would be

1 his left.

2 A. That would, I assume, be this wound.

3 Q. Yes, sir. Describe that wound for us.

4 A. Well, that's an abrasion. An abrasion is just  
5 another term for a scrape. If you fell down and hit the  
6 skin surface, you scrape the outer surface of the skin, that  
7 would be what we call an abrasion and everybody else calls a  
8 scrape.

9 Q. You saw that there was a defect in the  
10 ballistic vest. Did it look like it might be consistent  
11 with a bullet which may have struck the ballistic vest?

12 A. Could be.

13 Q. Can you tell by looking at one of these  
14 wounds, abrasions, whether Officer Hawkins was alive or not  
15 at the time he received it?

16 A. There are three abrasions that are visible in  
17 this photograph. Two of them in my opinion he was alive.  
18 One, he would be -- it would be consistent with postmortem  
19 injury. It's the kind of abrasion that you get and this  
20 will be the one in the middle, when the paramedics and  
21 hospital are trying to use defibrillation. They're really  
22 kind of burns more than they are abrasions, but they have  
23 the same appearance as an abrasion.

24 But those are much lighter in color. And  
25 it's the kind of thing that you see when the heart is no

1 longer profusing an area of injury well. So although  
2 ideally they could be in the dying phase, based on what I'm  
3 seeing, it's more consistent with postmortem-type injury.

4 Q. Now, the wound we see at the bottom, the  
5 stitching across the chest, would that be efforts by the  
6 emergency room?

7 A. Yeah. That would be a combined thoracotomy  
8 incision. What they do is they'll make an incision across  
9 -- they see multiple gunshot wounds, so they make an  
10 incision across the chest where they can open up and go into  
11 the left chest cavity, the heart sac, and the right chest  
12 cavity to see if there's anything that they could sew up, if  
13 possible, to save him.

14 Q. Now, there's another abrasion on the right  
15 side of his chest?

16 A. Yes, sir. There's an abrasion. There's a  
17 little bit of a bruise around it as well.

18 Q. In your opinion, how was that abrasion caused?

19 A. In my opinion, it's most consistent with  
20 gunshot wound No. 7. I said earlier that the bullet was in  
21 the right chest muscle and really it was pretty close to  
22 underneath the skin. So what I think it's most consistent  
23 with is when the bullet was losing its energy, it couldn't  
24 get out. And so as the bullet tries to exit, the skin will  
25 also kind of evert. And if it strikes up against a rough



1 surface, it can cause a scrape as it exists.

2 In this case the bullet didn't get out,  
3 but it's right directly over where the bullet is that I  
4 recovered. So that's my opinion.

5 Q. Now, there was some other abrasions to the  
6 legs of Officer Hawkins; is that correct?

7 A. Yes, sir.

8 Q. I'll show you State Exhibit 207. What do we  
9 see there?

10 A. These are abrasions. One is on the left thigh  
11 and the other is on the right thigh and then we call this  
12 area the popliteal area, but it's kind of the opposite side  
13 of the knee.

14 Q. And did you have an opinion -- let me show you  
15 State Exhibit 208. Does that show the other abrasion better  
16 on the other leg?

17 A. That shows the thigh, left thigh, a little bit  
18 better, yes, sir.

19 Q. In your opinion was Officer Hawkins alive when  
20 he received these injuries?

21 A. Well, they certainly could be perimortem, in  
22 the dying phase, but they certainly are consistent with  
23 postmortem-type injuries.

24 Q. So he would be either dead or dying at that  
25 point?

1 A. In my opinion, yes, sir.

2 Q. Would these abrasions be consistent with being  
3 run over by a car and drug?

4 A. Yeah. With the separation between the two,  
5 that is what it appears to be.

6 Q. Let me show you State Exhibit 490. There was  
7 some personal items that accompanied Officer Hawkins' body;  
8 is that right?

9 A. Yes, sir.

10 Q. Is that what we're seeing here in 490?

11 A. Yes, sir.

12 Q. What type of items were those?

13 A. There are quite a few. I mean, you can see  
14 some personal items like a memo pad, you can see some  
15 change, you can see a small pistol, a clip, a loose bullet,  
16 a holster for the small pistol, and then a couple of other  
17 pens and a couple of other things with it.

18 Q. And the photograph was taken just how they  
19 appeared when they arrived at your office?

20 A. Well, they were bagged and then we put them on  
21 a white sheet of paper and photographed them.

22 Q. Let me show you State Exhibit 757. Is this an  
23 identification picture of Officer Hawkins' autopsy?

24 A. It's an identification picture of Officer  
25 Hawkins, yes, sir.

1 Q. Doctor, did you have an opinion as to the  
2 cause of death?

3 A. Yes, sir.

4 Q. What was that?

5 A. Died as a result of injuries from multiple  
6 gunshot wounds.

7 Q. And do you have an opinion as to the manner of  
8 death?

9 A. Yes.

10 Q. What was that?

11 A. The manner of death is homicide.

12 MR. SHOOK: Pass the witness.

13 CROSS-EXAMINATION

14 BY MR. SANCHEZ:

15 Q. Doctor, just a few questions. The bullet  
16 fragments or the projectile fragments or jackets, those were  
17 put together by you and given over to somebody at SWIFS. Is  
18 that how it worked?

19 A. I don't know the word put together. I  
20 recovered them and as I recovered them, if they were large  
21 enough that I could label the bullets, I labeled the  
22 bullets. And that's reflected in the report. They were  
23 then put in a labeled envelope by me and then they were  
24 sealed and taken to the Criminal Investigation Laboratory,  
25 which is part of our office.

1 Q. And the purpose of that would be to try to  
2 match those fragments up with some firearms, if they were  
3 ever recovered, or just to do testing on them; is that  
4 correct?

5 A. That's the ultimate goal. I mean, obviously,  
6 my aspect would be to recover any sort of evidence that may  
7 or may not be useful, but to recover it, that they could be  
8 further examined.

9 MR. SANCHEZ: I pass the witness.

10 REDIRECT EXAMINATION

11 BY MR. SHOOK:

12 Q. Doctor, in fact, let me talk to you about  
13 those projectiles that you recovered. Let me show you what  
14 has been marked State Exhibits 210 through 213. Are those  
15 projectiles that you recovered from Officer Hawkins' body or  
16 clothing?

17 A. Yes, sir.

18 Q. As well as State Exhibit 214 and 215?

19 A. Yes, sir.

20 Q. And 216 through 220?

21 A. Yes.

22 Q. And they are in individual packages. Is it  
23 your writing that's contained on the outside, detailing  
24 where the bullets were recovered?

25 A. Yes, sir.

1 Q. And the number that you had given the bullets?

2 A. That's correct.

3 MR. SHOOK: Your Honor, at this time we  
4 will offer State Exhibits 210 through 220.

5 MR. SANCHEZ: No objection, Your Honor.

6 THE COURT: Nos. 210 through 220 shall be  
7 admitted.

8 MR. SHOOK: We'll pass the witness.

9 MR. SANCHEZ: I have no further  
10 questions.

11 THE COURT: Counsel, please approach.

12 (Bench conference)

13 THE COURT: May this witness be excused?

14 MR. SHOOK: No objection.

15 MR. SANCHEZ: No objection, Your Honor.

16 THE COURT: Thank you, Doctor, you are  
17 free to go.

18 MR. SHOOK: We'll call Brett Mills.

19 BRETT MILLS,

20 having been duly sworn, was examined and testified as  
21 follows:

22 DIRECT EXAMINATION

23 BY MR. SHOOK:

24 Q. Tell us your name, please.

25 A. My name is Brett, B-R-E-T-T; Mills, M-I-L-L-S.

1 Q. How are you employed, sir?

2 A. I work for the FBI in the FBI laboratory, the  
3 Firearms Toolmarks Unit.

4 Q. Could you tell the jury what your professional  
5 and educational qualifications are for the position you  
6 hold.

7 A. I have a bachelor of science degree from  
8 Talliston State University and the training that I have  
9 received from the Bureau is an in-house training program  
10 approximately two years in duration, consisting of reading  
11 literature, the theories behind firearms identification,  
12 toolmarks identification.

13 We will go on factory tours. We will  
14 tour the firearms manufacturing facilities, ammunition  
15 facilities, and tool facilities to see how marks that we're  
16 looking on, bullets, cartridge cases, are imparted from a  
17 barrel or from a tool and what causes these marks to be  
18 unique.

19 We go back to the lab. We wind up  
20 working side by side with qualified examiners that are in  
21 the laboratory itself. We look at cases that they are  
22 working on at the present moment. We are given test cases,  
23 different scenarios, different firearms shooting.

24 Then we go through an oral board process.  
25 And the oral board process is basically just an oral test to

1 test my knowledge on my subject matter. After that we work  
2 what is called a mock trial, moot court, where we are given  
3 a test case. We work it from start to finish. Then the  
4 examiners in my unit will act as the judge, the prosecution,  
5 and defense, and we'll have other unit members act as the  
6 jury. And this is to see if I can actually convey in a  
7 clear and concise manner that's understandable to a jury.

8 After that process, then I've been given  
9 the blessing by the other examiners within the unit to be a  
10 qualified examiner.

11 Q. And how long have you been working in that  
12 capacity with the FBI?

13 A. In the laboratory?

14 Q. Yes, sir.

15 A. Approximately 15 years, sir.

16 Q. And part of your duties, do you conduct  
17 examinations and try to determine bullet trajectories at  
18 crime scenes?

19 A. Yes, sir. That's a subdiscipline of firearms  
20 identification.

21 Q. Let me ask you, back in June of 2001 did you  
22 come here to Dallas with other members of your team and  
23 conduct some tests and calculations out at the Oshman's as  
24 well as the Irving auto pound?

25 A. That's correct, sir.

1 Q. Let me show you some photographs which have  
2 been marked State Exhibits 241 through 247. Are those  
3 photographs of the car you examined, as well as some  
4 photographs of the scene from behind the Oshman's?

5 A. Yes, sir, they are.

6 Q. And then State Exhibit 248 through 257, are  
7 these drawings that were made which demonstrate the  
8 trajectory or the angle of shots fired into the vehicle  
9 trailers there that were involved in this incident?

10 A. Yes, sir, they are.

11 Q. And would they aid you in detailing your  
12 testimony to the jury?

13 A. Yes, sir, they will.

14 MR. SHOOK: Your Honor, at this time we  
15 will offer 241 through 257.

16 MR. SANCHEZ: We have no objection, Your  
17 Honor.

18 THE COURT: Nos. 241 through 257 shall be  
19 admitted.

20 Q. (By Mr. Shook) Let me ask you first,  
21 Mr. Mills, if you would explain to the jury the type of  
22 testing that you came to Dallas to do in regards to these  
23 trajectories?

24 A. It's referred to as a bullet trajectory  
25 reconstruction. We are called to a crime scene, usually



1 it's either a house or a car, an inanimate object that  
2 doesn't actually move, and we're asked to see if we can  
3 determine the trajectory or flight path of a bullet to try  
4 and find the actual position of an individual who was  
5 holding a firearm as they are firing.

6 Q. Okay. Let me show you State Exhibit 241. Is  
7 this a photograph of Officer Hawkins' car?

8 A. It's a photograph of a police car that I  
9 examined, yes, sir.

10 Q. And could you explain what we're seeing here  
11 in the photograph?

12 A. What you can see are yellow dowel rods  
13 sticking out of holes that I have actually determined a  
14 trajectory off of.

15 Q. Mr. Mills, I think that I have a laser pointer  
16 up there. If that would aid you in any way, feel free to  
17 use it, okay?

18 A. Yes, sir. Here you see in the hood of the car  
19 you see a dowel rod and it's coming back out in this  
20 direction and then on the passenger side of the patrol car  
21 you actually see dowels, also.

22 Q. What's the purpose of using these dowel rods?

23 A. The dowel rods actually give us a point of  
24 origin for us to determine the angles. Once we determine --  
25 if I can back up. When I first approach a vehicle or a

1 house, I try and determine possible holes, bullet holes, and  
2 possible bullet impacts. And I would go start on the  
3 outside, work my way all the way in.

4 Then I would try and determine if any of  
5 the holes or bullets will match up into one individual  
6 pathway. After I have done that, I then will insert my  
7 dowel rods to give me basically pointing your finger at a  
8 direction. I will then take protractors, angle finders, and  
9 I will take my measurements off of the dowel itself, so it  
10 gives me a firm reference point to use.

11 Q. And here we're seeing the dowels inserted into  
12 the car, which is all part of the process of you making  
13 these determinations?

14 A. That's correct, sir.

15 Q. State Exhibit 242?

16 A. Again, it's just another position of the  
17 vehicle. You can still -- it just gives you a different  
18 perspective. You can still see the dowels as they are  
19 protruding out of the bullet holes.

20 Q. And then 243, what does that show us?

21 A. This is -- the hood has been raised and this  
22 is one of the bullet holes as it's coming back in and  
23 there's an impact down here in the rubber molding.

24 Q. State Exhibit 244.

25 A. This is from the driver's side. Right along

1 here along the door post, you can see this blemish. We  
2 refer to it as a bullet wipe. When usually a bullet is  
3 either whether it's jacketed or if it's just a lead  
4 projectile, even the jacket can split open and there's a  
5 lead core inside and it leaves this gray material, basically  
6 just rubbed off onto the surface.

7 Q. And then State Exhibit 245?

8 A. This is the rear position of the automobile.  
9 Back down here in the bottom portion you see a webbing or  
10 like a spider web effect of the glass itself and up into --  
11 there's a little hump right across here. I also had a  
12 bullet hole that tracks back all the way up through the  
13 front windscreen.

14 Q. There's been testimony that the car was found  
15 backed up under a trailer, which might have caused some  
16 shattering of glass on the back window. But also,  
17 obviously, evidence of bullets passing through the car.  
18 Could you determine just by looking at that glass, if the  
19 back window was shot out by the bullets or could it have  
20 been by the trailer?

21 A. Um, the bullet itself would have already  
22 started fracturing the glass itself and glass is very, very  
23 unstable once you break the crystalline structure of it.  
24 When we perform bullet trajectory schools, we actually will  
25 shoot cars so that students can practice on them and just

1 anything from whether it's heat, moisture, anything like  
2 that, glass can automatically just fall down or you could  
3 actually just shoot one shot and the whole glass will fall  
4 down.

5 But the bullet, if my understanding is  
6 correct, if the bullet went through first, then the glass or  
7 the pattern has already been broken, so that would have been  
8 the major cause of the glass falling out.

9 Q. I want to talk for a minute about your  
10 diagrams that were made, State Exhibit 248.

11 MR. SHOOK: Your Honor, if the witness  
12 needs to step down to move around to demonstrate some of  
13 these, will the Court give us permission for that?

14 THE COURT: Yes, sir.

15 Q. (By Mr. Shook) What do we see here in 248?

16 A. This is just giving you a perspective from the  
17 driver's side of the front of the automobile. What you see  
18 along here with these individual posts is what I have  
19 determined to be the pathway of the bullet as it's going  
20 into the police car.

21 Over on the left side you see these big  
22 cones. And then in this direction over here, it's more of a  
23 lateral. What happened with these is they actually impacted  
24 into the automobile glass and depending on the type of  
25 material that we're testing at the moment, if a bullet goes

1 into a piece of wood, it's a very nice type hold, because  
2 basically the cellular structure expands and after the  
3 bullet passes through, it will contract back down.

4 But when you have an item like metal  
5 where you can have expansion and ripping and tearing or  
6 glass, you might have a hole that's larger than the actual  
7 caliber of the bullet.

8 So what we do is we actually use cones.  
9 And these cones -- we insert the dowel into the cone and the  
10 cone into the hole itself. And that places the dowel into  
11 the center of the pattern -- or the hole in the pattern of  
12 the glass. But there's still some actual play in there.

13 So that's what gives you this actual  
14 bracket that you see up here. When I put my dowel into it,  
15 I cannot give you a flat line trajectory. I can tell you it  
16 was between those two points.

17 So basically my pathway of the bullet  
18 would be from this point here all the way up to this point  
19 here.

20 Q. Now, the angles of the bullets that are  
21 hitting the hood there on the driver's side --

22 A. Yes.

23 Q. -- you were able to make precise  
24 determinations for those angles; is that right?

25 A. Yes, sir, that is correct.

1 Q. Looking -- if we were to look at a photograph,  
2 it might look like those bullets fired to the hood were  
3 coming from the same exact angle. But your actual  
4 calculations show very different angles; is that correct?

5 A. That's correct. If you look at this one and  
6 then if you can position the car and look at it from a side  
7 view, you will see that the angles are actually changing.

8 Q. Okay. Let's look at State Exhibit 249. What  
9 does that show?

10 A. This is just a side view. Again, you can  
11 actually see the cone on -- from the front of the hood. You  
12 can see a pathway that I've shown going all the way through  
13 the police officer's car. You see possible impacts which  
14 are these right here with I numbers. The F numbers are  
15 describing the bullet holes that I pointed out into the  
16 front. And then in the rear you have the exit of -- I  
17 believe it's 7 point -- 7 to 7.1 to 7.2.

18 Q. State Exhibit 250?

19 A. Just a perspective from the passenger's side.

20 Q. Again, the cones represent the various angles  
21 that those particular bullets passed through the car?

22 A. That's correct.

23 Q. And then we see on the side of the hood the  
24 different angles that the bullets were striking the car?

25 A. Yes, sir.

1 Q. State Exhibit 251?

2 A. It's just an overview perspective, again  
3 showing the pathways. There were four holes on the  
4 passenger's side and I had four holes on the driver's side.

5 Q. Now, there were also bullets that looked like  
6 they came in through the driver's side window; is that  
7 right?

8 A. Yes, sir. I had the one that I showed on the  
9 driver's side post, which would be along here and then there  
10 was a computer keyboard with a monitor. There was actually  
11 a bullet that had pierced into the computer keyboard itself  
12 and created a furrow. The problem is that by the time I had  
13 come out to actually examine it, this is not a stationary  
14 keyboard. It would pivot back and forth and swivel back and  
15 forth. So I did not have an exact location of where this  
16 was at the time.

17 But if it is only on the driver's side  
18 position, then the bullet pathway would have come from the  
19 driver's side. I just couldn't give you a more definitive  
20 answer.

21 Q. You also examined a trailer that was out there  
22 at the back of the Oshman's that had some -- that bullets  
23 struck it; is that right?

24 A. Yes, sir. There was -- there were three holes  
25 that we identified.

1 Q. Let me show you State Exhibit 253. What do we  
2 see there?

3 A. This is the rear of the trailer that we  
4 examined out at Oshman's. We had three entrances here, 1,  
5 2, 3. When we examined this trailer, there was nothing  
6 inside of it. We were informed that at one time or at the  
7 time of the shooting that it was loaded with a lot of  
8 material and stuff and all that material had been gone.

9 So I could not give you an impact point  
10 of where it hit, because of the material had already been  
11 removed.

12 No. 2 here, it is right along a hinge  
13 strap that's used. This is one of those rolling doors.  
14 When you lift it up, the hinges will break down. This one  
15 actually hit the metal hinge and ricocheted, changing its  
16 angle of deflection and exiting out here along the side of  
17 the trailer.

18 No. 3 is through the plat wood and exits  
19 out No. 4 up here.

20 Q. Let me show you 254. Does that show a top  
21 view looking down on the trailer?

22 A. Yes, sir. You can actually see better here  
23 how bullet hole No. 2 lines up with bullet hole No. 5 after  
24 ricocheting off of the hinge strap.

25 Q. And then State Exhibit 255, what do we see



1 there?

2 A. It just gives you a side perspective from the  
3 driver's side, showing the horizontal angle coming back and  
4 downward.

5 Q. And then finally 257?

6 A. It gives you a rearward perspective, showing  
7 how the lines would look if you could actually see through  
8 them, the pathways of the bullets themselves.

9 Q. Did you also examine part of the building to  
10 see if you could determine if bullets had actually struck  
11 the building?

12 A. Yes, sir. There were some possible impacts  
13 along the back where the loading dock is. And it would be  
14 right down in this area underneath here. The concrete was  
15 chipped, looked like you had vaporous lead from the bullet  
16 impacting and just pulverizing into small pieces.

17 So we took chemical test swabs and  
18 processed them and we actually had one that did test  
19 positive for lead.

20 Q. So one of the two impact spots did test  
21 positive?

22 A. For lead, yes, sir.

23 Q. Then there was one more diagram, I believe,  
24 that helped demonstrate the angle of fire, which is on  
25 diagram 258; is that right?

1 A. Yes, sir, that's correct.

2 Q. Would this diagram help you explain your  
3 testimony as far as bullet trajectories in the back of the  
4 Oshman's?

5 A. Yes, sir.

6 MR. SHOOK: We'll offer 258.

7 MR. SANCHEZ: No objection, Your Honor.

8 THE COURT: No. 258 shall be admitted.

9 MR. SHOOK: May I have the witness step  
10 down for a moment, Judge?

11 THE COURT: He may.

12 Q. (By Mr. Shook) If you could step over here to  
13 the diagram, Mr. Mills. What are we seeing here on 258?

14 A. This is a side profile of the Oshman's, rear  
15 of the Oshman's parking lot. To give you a perspective, the  
16 loading dock is back up over here. And this is where I had  
17 the possible impacts up in here. And then here is the  
18 trailer parked back down through here and this is just  
19 giving you a perspective of the bullet pathways.

20 Q. The actual area behind the loading dock had  
21 kind of an angle to it; is that right?

22 A. Yes, sir.

23 Q. If the Ford -- say, hypothetically, if a Ford  
24 Explorer were leaving the loading dock area at this  
25 location, and fired a gun out the passenger's side window,

1 would that be consistent with the bullet angles that struck  
2 the trailer?

3 A. If I'm following correctly, if the Explorer  
4 was driving out here, I'm assuming coming out the exit here.

5 Q. Yes, sir.

6 A. Wherever that window lined up or the firearm  
7 itself sticking out the window, wherever it passes these red  
8 lines, yes, sir, then that could be a pathway of the bullet.

9 MR. SHOOK: Your Honor, we will pass the  
10 witness.

11 CROSS-EXAMINATION

12 BY MR. SANCHEZ:

13 Q. Mr. Mills, were you ever asked to do an  
14 analysis on a Ford Explorer?

15 A. No, sir, I was not.

16 Q. Were you ever shown one?

17 A. No, sir, I was not.

18 MR. SANCHEZ: Pass the witness.

19 MR. SHOOK: Nothing further.

20 THE COURT: Thank you, Special Agent, you  
21 may stand down.

22 THE WITNESS: May I please be excused?

23 MR. SHOOK: No objection.

24 MR. SANCHEZ: No objection.

25 THE COURT: You may.

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TIMOTHY SLITER,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRSKYE:

Q. Can you tell us your full name, Doctor?

A. My name is Timothy Sliter.

Q. How are you employed?

A. I am employed at the Southwestern Institute of Forensic Sciences here in Dallas as the Supervisor of the Forensic Biology Laboratory.

Q. The institute is what we commonly call the crime lab; is that right?

A. Yes, sir. It's the Dallas County Crime Lab.

Q. What are your duties on a day-in, day-out basis?

A. I oversee all the testing activities that are done in the lab on the case work that's submitted to the laboratory. That would include both the analyses which are done on evidence items when they initially come into the lab, which would be a searching for biological evidence, such as blood or seminal fluid or other sorts of biological material. And then also the DNA testing that would be done on those items eventually.

Q. In fact, you did some DNA testing involving

1 this case we're here on today; is that right?

2 A. Yes, I did.

3 Q. What type of training and educational  
4 background do you have that allows you to do your job?

5 A. I have my doctorate degree in genetics. I  
6 have a number of years of postgraduate education and  
7 training in the areas of physiology, molecular biology, and  
8 genetics.

9 I taught for a number of years before I  
10 held my current position at the undergraduate level and the  
11 graduate level in the areas of genetics and physiology. In  
12 regard to the specific testing activities that I do on DNA,  
13 I completed a training program in the techniques that we use  
14 in our laboratory.

15 Before I started case work, I took  
16 competency tests in those areas. I have to take regular  
17 proficiency tests in those techniques. I have also had  
18 training in DNA testing as it applies to forensics from  
19 staff of the FBI and staff of the Armed Forces DNA  
20 Identification Laboratory.

21 Q. And briefly tell us, if you will, what DNA is.

22 A. DNA is an abbreviation for a chemical material  
23 that is located in all of the cells in our body. It is  
24 located in certain structures called chromosomes and it is  
25 the genetic material that contains the information for

1 making us human. And it's the material that is passed  
2 between mothers and fathers and their children, each  
3 generation.

4 DNA as it's used in forensics or criminal  
5 investigations is used in what is referred to as human  
6 identification. Most of the DNA that we each have is  
7 exactly the same as the DNA that everybody else has.  
8 Ninety-nine point nine percent of the DNA that I have is the  
9 same as anybody else. Only one-tenth of one percent is  
10 different and it's that one-tenth of one percent that is  
11 responsible for what we can refer to as our individual  
12 characteristics, our individual eye color, and hair color  
13 and skin color and our individual biochemistries, the way we  
14 work chemically, which can be related to diseases.

15 So it's that one-tenth of one percent  
16 that we, as forensics scientists, are interested in because  
17 it's the region or it's the portion of the DNA that is  
18 different between people and would allow us to say that a  
19 certain blood stain was either consistent with coming from a  
20 particular person or was not consistent with that.

21 Q. So you take known samples or known DNA  
22 profiles and compare them against unknown or questioned  
23 samples or profiles to determine there what is a match or an  
24 exclusion; is that right?

25 A. Yes. That's essentially what we do. We

1 compare a DNA profile from a known person. Usually that  
2 comes in the form of either a blood sample from that person  
3 or a scraping of the cells from the inside of the mouth,  
4 which is referred to as a buccal swab sample.

5 We get a DNA profile of that known person  
6 and then we can compare that profile to DNA profiles that we  
7 get from blood stains or other sorts of evidence that have  
8 been collected from a crime scene or somehow in association  
9 with a crime.

10 If you don't have a match, if you have an  
11 exclusion, what are the implications of that?

12 A. In the case of an exclusion, that known person  
13 would be excluded as being a possible source of that  
14 biological material. That person would not be able to leave  
15 that material.

16 Q. You can say that without a question?

17 A. Yes.

18 Q. If you have a match, what are the implications  
19 of that?

20 A. In the case of a match, it -- matches can  
21 range from very good matches to not so good matches. So  
22 what we would say in the case of a match is that that person  
23 is not excluded as being a possible contributor of that  
24 material; therefore, they are a possible source of the  
25 material that was collected at the crime scene.

1                   And then we would give a statistical  
2 weight to that match. We would provide a statistic which  
3 would estimate how often that match would be expected to  
4 occur from a randomly selected person.

5           Q.       So the numbers involved kind of give  
6 significance to the match; is that right?

7           A.       Yes, yes.

8           Q.       Is there a particular type of method that you  
9 used in this case when you talk about DNA testing?

10          A.       We used a type of DNA testing referred to as  
11 short tandem repeat or STR DNA testing.

12          Q.       And this type of technology is generally  
13 accepted in the scientific community as valid?

14          A.       Yes.

15          Q.       And that particular technique is also  
16 generally accepted in the scientific community as valid?

17          A.       Yes.

18          Q.       The particular technique you used in this  
19 case, was it applied properly?

20          A.       Yes, it was.

21          Q.       Let's talk about the known samples you had in  
22 this case. Looks like you had buccal swabs from six  
23 individuals; is that correct?

24          A.       That is correct, yes.

25          Q.       George Rivas, Michael Rodriguez, Donald



1 Newbury, Patrick Murphy, Jr., Joseph Garcia, and Randy  
2 Halprin; is that right?

3 A. That's correct.

4 Q. And you had an autopsy blood sample from Larry  
5 Harper?

6 A. That's correct.

7 Q. You also had an autopsy blood sample from  
8 Aubrey Hawkins; is that right?

9 A. That's correct.

10 Q. As far as the questioned items of evidence  
11 that you looked at, you had quite a few; is that right?

12 A. Yes. Approximately 90 samples were tested.

13 Q. You had, I guess, a 21-page report in front of  
14 you that reflects your findings -- all your findings in this  
15 case; is that right?

16 A. That's correct.

17 Q. I want to focus with you generally on four  
18 different areas, some samples from some blood stains that  
19 were taken from the parking lot of the Oshman's, some  
20 samples of swabbings that were taken from a Glock revolver,  
21 some swabbings that were taken from a Smith & Wesson  
22 revolver, and finally some swabbings that were taken from  
23 the Ford Explorer. Okay?

24 A. Uh-huh.

25 MR. WIRSKYE: May I approach, Your Honor?

1 THE COURT: You may.

2 Q. (By Mr. Wirskye) We met earlier this morning,  
3 is that right, Doctor?

4 A. That's correct.

5 Q. Let me show you this. Let me show you a  
6 report marked for identification as State Exhibit 493. You  
7 looked at that previously and that is an exact duplicate of  
8 your original report; is that right?

9 A. Yes, it is.

10 MR. WIRSKYE: Your Honor, we offer  
11 State's 493.

12 MR. SANCHEZ: No objection, Your Honor.

13 THE COURT: No. 493 shall be admitted.

14 Q. (By Mr. Wirskye) I also asked you to look  
15 this morning at two different weapons, the first of which is  
16 in evidence, marked State's 178. Is that the Smith & Wesson  
17 revolver that you did some testing on?

18 A. Yes, this is. And it is an item that was  
19 received in our laboratory, item No. 16. That's the way  
20 it's described or referred to in my report.

21 Q. And it's your understanding this is the  
22 revolver that came from the crime scene at the Oshman's; is  
23 that right?

24 A. Yes, that is my understanding.

25 Q. Let me also show you what is not in evidence

1 yet, but it's marked for identification as State 309. It's  
2 a Glock 17, Officer Hawkins' service weapon. I'll ask you  
3 to check your records and make sure that that item is the  
4 Glock pistol that you looked at.

5 A. Yes. It has the same serial number as the  
6 item that we analyzed and corresponds to our item No. 156.

7 Q. Okay. There's been testimony from the Irving  
8 crime scene officers that they collected samples of blood, I  
9 guess, or stained cloths that were taken from the crime  
10 scene there at Oshman's, I believe your items 47 through 52?

11 A. Yes, that's correct.

12 Q. What were the results of your DNA analysis on  
13 those items?

14 A. Each of those items 47, 48, 49, 50, 51, and  
15 52, in my report gave a DNA profile that matched the DNA  
16 profile of Aubrey Hawkins.

17 Q. Before you get to the DNA analysis, do you  
18 also do a presumptive test for blood?

19 A. Yes. Initially all these samples would have  
20 been received into the laboratory and would have been  
21 screened for the presence of blood and that was specifically  
22 the request for analysis that was made when the items were  
23 submitted.

24 The analysis for blood is a two-step  
25 process. Initially, the samples are visually examined and

1 then they are tested with what is referred to as a  
2 presumptive test for blood. That is a simple chemical test  
3 which, if it gives a positive result, would indicate that  
4 there is a material there which shows certain chemical  
5 characteristics which are consistent with blood. It doesn't  
6 definitively identify the material as blood, but it does say  
7 that it has those presumptive characteristics. And it  
8 doesn't tell if it's human blood or animal blood.

9 The second step in the process would be a  
10 confirmatory test which would be carried out, providing that  
11 there's enough of the sample to test. Sometimes the samples  
12 we get are very small. They are so small that we can only  
13 do a presumptive test and then we have to reserve the rest  
14 of the sample for DNA testing.

15 But if there's enough material to carry  
16 out a confirmatory test, which will establish that the  
17 material is human blood, if it is human blood.

18 Q. Were the samples from the Oshman's parking  
19 lot, did those come back as human blood?

20 A. Each of those samples, 48 through 52, tested  
21 positive for human blood.

22 Q. Again, those were matched to Aubrey Hawkins?

23 A. Yes.

24 Q. Now, talking about the Glock revolver, which  
25 is State's Exhibit 309, your item No. 156 --

1 A. Yes.

2 Q. -- looks like there were 4 different swabbings  
3 that were taken from the different areas of that pistol; is  
4 that right?

5 A. That's correct.

6 Q. What did your results show about the Glock  
7 pistol?

8 A. The four samples that were taken, RT-1, T-2,  
9 T-3, and T-4, each gave a positive result with the  
10 presumptive test for blood, but there was insufficient  
11 material to perform the test for human blood. So we can say  
12 there's bloodlike material there, but we can't say for  
13 certain that it's human blood.

14 We did for each of those samples,  
15 however, obtain -- we did DNA testing and we obtained a  
16 human DNA profile from those items, from the test samples.  
17 And in each case there was a mixture of DNA from more than  
18 one person. And it's in each case it was a type of mixture  
19 which we refer to as a major/minor mixture in the sense that  
20 there was one contributor to it which was present at very  
21 high levels and we can tell exactly what their DNA profile  
22 was.

23 And in each of those samples the major  
24 contributor to the sample had a DNA profile that matched the  
25 DNA profile of Aubrey Hawkins. And then each of the samples

1 also had some additional genetic markers at a lower level  
2 which would indicate a contribution of DNA and biological  
3 material from one or more other people.

4 Q. Were one of those -- did you get a match on  
5 one of the minor contributors back to George Rivas?

6 A. There was one sample, a T-4 sample, in which  
7 there were at least two minor contributors to it in addition  
8 to a major profile which matched Aubrey Hawkins. And all of  
9 the genetic markers that we saw in the DNA profile of George  
10 Rivas were seen in that mixture. So we couldn't exclude him  
11 as being a contributor of biological material. So we would  
12 conclude that he was a possible contributor.

13 Q. Let me next ask you about that revolver,  
14 State's Exhibit 178, your item 16.

15 A. Yes.

16 Q. Were there three swabbings that were done of  
17 that revolver?

18 A. Yes, there were.

19 Q. And what were the results with respect to the  
20 presumptive blood tests?

21 A. Each of those samples tested positive with a  
22 presumptive test and they also tested positive with a test  
23 for human blood.

24 Q. Okay. With respect to the DNA on that  
25 revolver, what did you find?

1           A.       Each of those samples gave a DNA profile of a  
2     single male individual and it matched the DNA profile of  
3     Aubrey Hawkins.

4           Q.       Finally, you were given some swabbings from  
5     the Ford Explorer; is that right? Your items 53 through 59?

6           A.       Yes.

7           Q.       Okay. And what were the results of your  
8     testing on those items?

9           A.       There were two stains that were submitted,  
10    item -- our item No. 53 and 54, which gave a DNA profile  
11    which matched the DNA profile of George Rivas. There was  
12    one stain, our item No. 55, which gave a DNA profile that  
13    matched the DNA profile of Larry Harper. And there were  
14    three stains 56, 57, and 59, which gave a DNA profile which  
15    matched the DNA profile of Aubrey Hawkins.

16          Q.       And all that came from within that Ford  
17    Explorer; is that correct?

18          A.       That's the information which was given to us  
19    -- well, I'm not sure if it came from inside. Some of the  
20    samples may have come from outside the vehicle.

21          Q.       Do your notes show where exactly those samples  
22    came from within the Ford Explorer?

23          A.       Yes.

24          Q.       Could you run through that quickly?

25          A.       Our item No. 53, which matched George Rivas,

1 was -- the submittal information that was provided by Irving  
2 Police Department, they indicated that that blood sample  
3 came from the center of the left seat.

4 Item 54, which also gave a DNA profile  
5 that matched George Rivas, that originated from the left  
6 side of the left seat. Item 55, which matched Larry Harper,  
7 that originated from the inside of the right back door.

8 Item 56, which matched Aubrey Hawkins,  
9 originated from the left front fender well. So that's a  
10 sample from the outside of the car. Item 57, which also  
11 matched Aubrey Hawkins, originated from the outer edge of  
12 the -- on the submittal sheet it says BL tire, which  
13 probably means back left tire.

14 And item 59, which also matched Aubrey  
15 Hawkins, that originated from the inner side of the left  
16 back door window.

17 Q. Okay. And you told us earlier that, I guess,  
18 numbers give significance to these matches?

19 A. Yes. We would calculate -- any time that we  
20 see a match between an evidence sample, a questioned  
21 evidence sample, and a known person, we will calculate a  
22 statistic that provides a weight for that match. It's an  
23 attempt to assess how significant it is.

24 And in order to do that calculation, we  
25 have to utilize a data base that describes how frequently



1 the different genetic markers we look at are seen in the  
2 human population. And in this case we used a data base  
3 which was put together by the Texas Department of Public  
4 Safety in Austin for the three major population groups in  
5 Texas, Texas Caucasians, Texas Hispanics, and Texas African  
6 Americans.

7 Q. Generally, the greater the numbers, the more  
8 significance to the match?

9 A. Yes. The statistic that we calculate is what  
10 is called a random match probability. It takes the  
11 evidence, the profile, the DNA profile, that is obtained  
12 from the actual questioned evidence items and asks the  
13 question, what's the probability that a randomly selected  
14 person would be included as a possible source of that  
15 material?

16 In the case of a mixture, it would be,  
17 what's the probability that a randomly selected person would  
18 be included as a possible contributor to that mixture.  
19 Since there's more than one contributor to a mixture, the  
20 numbers for mixtures are automatically much less than they  
21 would be for single source samples, because there can be a  
22 variety of people who contribute to a mixture.

23 Q. So you may have a match that's 1 in 7 and that  
24 wouldn't be very significant, necessarily, as opposed to a  
25 match that would be like 1 in 36 trillion, which would have

1 great significance?

2 A. There would be a difference in their  
3 significance, yes.

4 Q. Okay. And just briefly, the match that you  
5 got for Aubrey Hawkins, the DNA match, what were the numbers  
6 associated with that?

7 A. The samples that I've described that matched  
8 Aubrey Hawkins all were full complete profiles. And they  
9 were single source profiles. So the numbers are very good.  
10 In Texas Caucasians the random match probability is 1 in  
11 20.1 trillion and African-Americans it's one in 19.1  
12 trillion and in Hispanics it's one in 45.2 trillion. And so  
13 the conservative value is about 1 in 20 trillion.

14 To put that in context, the population of  
15 the earth is about 6 billion. So that number, what it would  
16 mean, 1 in 20 trillion would mean that if I had a population  
17 of people equal to slightly more than 3,000 times the  
18 population of the earth, I would expect one person in that  
19 population to have this exact profile.

20 Q. With respect to George Rivas, what were the  
21 numbers associated with that match?

22 A. The samples that matched George Rivas that  
23 were obtained from the Ford Explorer were single source  
24 profiles. And in Caucasians, the probability would be 1 in  
25 6.47 trillion, in African Americans 1 in 26 -- one in 1.26

1 quadrillion and in Hispanics, 1 in 7.13 trillion. So the  
2 conservative value is the value seen in Caucasians of 1 in  
3 6.47 trillion.

4 And, again, to put that in context, six  
5 billion people on the earth. So if I had a population of  
6 people of slightly more than a thousand times the population  
7 of the earth, I would expect one person in that population  
8 to have the profile.

9 The profile from the Glock which was a  
10 mixture that I couldn't exclude George Rivas as being a  
11 contributor to, because it's a mixture the numbers are much  
12 less, in Caucasians it was 1 in 1,550, in African Americans  
13 it was 1 in 12,800 and in Hispanics it was one in 2,120. So  
14 the conservative number is the one seen in Caucasians 1 in  
15 1,550.

16 Q. And, finally, the number associated with the  
17 match you got from Larry Harper?

18 A. That was the sample from the Ford Explorer.  
19 And in Caucasians that was a full profile. And in  
20 Caucasians it is 1 in 3.17 trillion and in African-Americans  
21 1 in 216 trillion and in Hispanics, 1 in 7.31 trillion. The  
22 conservative number is seen in Caucasians, 1 in 3.17  
23 trillion.

24 So if I had a population of people equal  
25 to about 500 times the population of the earth, one person

1 in that population would be expected to have that profile.

2 Q. Doctor, just in general when your lab works a  
3 case, are items of evidence often retained for future  
4 testing?

5 A. As a routine course, we would always only  
6 consume a portion of a sample in order to do our testing and  
7 we would retain sufficient samples so that another  
8 laboratory could come back and do retesting.

9 Q. Is that also for the simple reason that in the  
10 future technology may advance?

11 A. Certainly that's possible.

12 Q. Okay. Specifically with this case, were you  
13 able to preserve different items of evidence to be retested,  
14 if somebody disagreed with the results?

15 A. Yes.

16 Q. Okay.

17 MR. WIRSKYE: I'll pass the witness, Your  
18 Honor.

19 CROSS-EXAMINATION

20 BY MR. SANCHEZ:

21 Q. Sir, specifically with the items that you  
22 testified about today, the matches were Aubrey Hawkins,  
23 Larry Harper, and George Rivas; is that correct?

24 A. Correct.

25 MR. SANCHEZ: I pass the witness.

1 MR. WIRSKYE: Nothing further, Your  
2 Honor.

3 THE COURT: Thank you, Doctor. You may  
4 stand down.

5 MR. SHOOK: We would like to have him  
6 subject to recall, Your Honor.

7 THE COURT: Looks like you are subject to  
8 recall. It's 10:25. We'll take a 20-minute break.

9 [Jury out]

10 (Recess)

11 [Jury in]

12 THE COURT: Thank you. You may be  
13 seated.

14 MR. SHOOK: Call David Spence, Judge.

15 DAVID SPENCE,  
16 having been duly sworn, was examined and testified as  
17 follows:

18 DIRECT EXAMINATION

19 BY MR. SHOOK:

20 Q. Would you tell us your name, please.

21 A. David Walker Spence.

22 Q. And how are you employed, sir?

23 A. As supervisor of the Trace Evidence Section at  
24 the Southwestern Institute of Forensic Sciences here in  
25 Dallas.

1 Q. And what are your duties there?

2 A. In addition to the supervision of the unit, I  
3 also examine different types of physical evidence or trace  
4 evidence. Specifically, I examine items for the presence of  
5 gunshot residues to determine either the distance between a  
6 gun and a piece of clothing at the time shots are fired or  
7 also to determine whether or not somebody has handled a  
8 weapon or fired a weapon by examining for the presence of  
9 primer gunshot residues.

10 I also examine paints, fibers, glass,  
11 blood spatter interpretations, and many other types of trace  
12 evidence examinations.

13 Q. Were you asked to conduct some trace evidence  
14 examinations involving the shooting of Aubrey Hawkins that  
15 occurred on December 24th of 2000?

16 A. Yes, I was.

17 Q. And you did several different types of  
18 examinations; is that correct?

19 A. That is correct, yes.

20 Q. Did you take some photographs of some of the  
21 items that you examined?

22 A. Yes, I did.

23 Q. Let me show you what has been marked as State  
24 Exhibits 221 through 237. Are these photographs of some of  
25 the items that you examined?

1 A. Yes, they are. No. 221 is a piece of leather,  
2 small section of leather --

3 Q. Let me go through them just -- all these items  
4 are items that you examined?

5 A. Yes. Yes, they are.

6 MR. SHOOK: I'll offer State Exhibits 221  
7 through 237.

8 MR. SANCHEZ: Your Honor, we have seen  
9 those and we have no objection.

10 THE COURT: Nos. 221 through 237 shall be  
11 admitted.

12 Q. (By Mr. Shook) Now, I want to go through  
13 these individually. But first let me ask you, did you  
14 receive into evidence a Sam Brown belt, along with some  
15 clothing and then a piece of leather to compare to the Sam  
16 Brown belt?

17 A. Yes, I did.

18 Q. What type of -- well, let me show you first  
19 221. Is this the piece of leather that was submitted to you  
20 by the Irving Police Department?

21 A. Yes, it is.

22 Q. What type of examination were you conducting  
23 in relation to that belt?

24 A. I was asked to examine the piece of leather to  
25 determine whether or not it originated from the Sam Brown

1 belt.

2 Q. And what were the results of your examination?

3 A. The results of the examination were that this  
4 piece of leather, this leather fragment, originated from the  
5 Sam Brown belt or the police officer's belt from Aubrey  
6 Hawkins.

7 Q. Let me show you State Exhibit 222. Does this  
8 show the portion of the Sam Brown belt that you compared the  
9 leather to?

10 A. Yes, it does.

11 Q. We see redness there on the belt. What is the  
12 cause of that?

13 A. The red coloration is a dye that is used to  
14 enhance latent fingerprints. It's called rhodamine,  
15 rhodamine dye, which is used by the latent fingerprint  
16 examiner.

17 Q. And let me show you No. 223. Does that show  
18 the piece of leather kind of fitted into the belt?

19 A. Yes, it does.

20 Q. In addition to that, did you also compare a  
21 portion of cloth that was recovered from Officer Hawkins'  
22 car?

23 A. Yes, I did.

24 Q. And what type of comparison did you do there?

25 A. There was a section of fabric submitted to me



1 and the request was to identify the source of that section  
2 of fabric, so I performed fiber comparisons on it.

3 Q. And what were your conclusions in regard to  
4 that test?

5 A. That the section of fabric consisted of many  
6 different colors and types of fibers. And those colors and  
7 types of fibers were consistent with the patch on the left  
8 sleeve of the uniform shirt from Aubrey Hawkins and that --  
9 in fact, that was a piece of the patch, the shoulder patch,  
10 from the uniform shirt.

11 Q. Did you also compare some glass fragments that  
12 were found at the scene and also taken from a -- near or in  
13 a Ford Explorer?

14 A. Yes, I did.

15 Q. And did you compare those to known samples  
16 from the Ford Explorer as well as Officer Hawkins' car?

17 A. Yes, I did.

18 Q. What were the results of your examination in  
19 those tests?

20 A. There were several glass fragments that were  
21 recovered and compared to both the broken window in Officer  
22 Hawkins' car as well as the Ford Explorer. There were  
23 several of the glass fragments consisted of the same color  
24 of glass, the same thickness of glass, and same optical  
25 properties as some of the glass fragments from the broken

1 window in Officer Hawkins' car as well as some of the glass  
2 fragments from the scene also matched back to the Ford  
3 Explorer, from the broken window of the Ford Explorer.

4 Q. Mr. Spence, did you also conduct some  
5 examinations on handwashings that were submitted to you by  
6 the medical examiner?

7 A. Yes, I did.

8 Q. Could you explain to the jury what  
9 handwashings are?

10 A. Handwashings are a type of evidence that is  
11 collected to determine whether or not somebody has fired a  
12 weapon or been in close proximity to a weapon when a weapon  
13 is fired.

14 What is done is a gunshot residue kit  
15 consisting of cotton swabs, those cotton swabs are then  
16 wetted with a dilute acid solution, and then the swabs are  
17 then used to wipe the back of each hand and the palms of  
18 each hand. It would be a separate sample for each portion  
19 of the hand.

20 Then we then analyze those swabs in a  
21 laboratory to determine the presence of primer gunshot  
22 residues. The primer residues are the residues that  
23 originate from within the primer cup of the cartridge case,  
24 the primer cup being the ignition source for the firing of  
25 the cartridge.

1 Q. Are handwashings done routinely on bodies that  
2 are submitted for autopsy at the Medical Examiner's Office?

3 A. Yes. They are routinely collected on any  
4 gunshot victim submitted to the Medical Examiner's Office.

5 Q. Was that done in the case of Aubrey Hawkins?

6 A. Yes, it was.

7 Q. What were the results of your examination on  
8 the handwipings from Officer Hawkins?

9 A. That there were traces of gunshot residues  
10 detected on both hands of Aubrey Hawkins, specifically on  
11 the palm and the back of the left hand as well as the palm  
12 of the right hand of Aubrey Hawkins.

13 Q. What would that be consistent with?

14 A. It's consistent with either handling and  
15 firing a weapon or being in close proximity to a weapon.  
16 And finding residue on both of the palms could possibly  
17 indicate a defensive posture where somebody is instinctively  
18 putting their hands up when they see a gun.

19 Q. If Officer Hawkins were seated in his squad  
20 car when shots were fired or multiple shots were fired at  
21 him and into his body and the evidence showed he may have  
22 had an arm up, would that, then, be consistent with having  
23 your hands up in close proximity to a firearm?

24 A. Yes. If he's within approximately five feet  
25 from the muzzle end of the weapon, I would expect to find

1 gunshot residue on his hands.

2 Q. Did you also examine the clothing of Officer  
3 Hawkins to try to determine range of fire?

4 A. Yes, I did.

5 Q. Could you explain to the jury how you -- what  
6 type of tests you conduct and how you are able to determine  
7 a range of fire?

8 A. Yes. The first examination is a visual  
9 examination of the clothing items. We take a look at the  
10 clothing just with the naked eye and determine the presence  
11 of bullet defects or rips or tears which could potentially  
12 be bullet defects.

13 The second step would be to further  
14 examine the article of clothing under a stereo microscope or  
15 low powered microscope and at that time we are examining for  
16 the presence of gunshot residues, either burned or partially  
17 burned flakes of gunpowder or some other gunshot residue,  
18 such as what we refer to as a grease ring. A grease ring  
19 would be the residue that is picked up by a bullet as it  
20 leaves the barrel of a weapon. And then when the bullet  
21 penetrates through the clothing, the residue then wipes off  
22 onto the clothing, leaving a characteristic grease ring.

23 We also then perform different chemical  
24 tests to determine the presence of chemical gunshot  
25 residues, specifically lead, which originates from a lead

1 bullet or from the primer constituents. And also nitrite  
2 residue, which originates from the burning of the gunpowder.

3 Q. What type of clothing was submitted to you  
4 that Officer Hawkins was wearing?

5 A. His uniform, consisting of a long-sleeved  
6 uniform shirt as well as a long pair of uniform pants. Also  
7 a long john T-shirt and a white undershirt, short-sleeved  
8 T-shirt, and a bulletproof vest, which consists of a front  
9 and back ballistic panel.

10 Q. Let's talk about the ballistic panel or  
11 ballistic vest first. Does State Exhibit 227 show the vest  
12 as you received it?

13 A. Yes, it does.

14 Q. Is that ballistic vest actually contained in  
15 some type of cover that the officer wears?

16 A. Yes. The blue -- the blue colored fabric is  
17 what we refer to as a carrier. It's simply -- it's like an  
18 envelope that holds the ballistic panel inside.

19 Q. Did it appear that the ballistic vest had been  
20 hit by bullets or bullet fragments?

21 A. Yes, it did.

22 Q. How many defects did you find?

23 A. There were three bullet defects in the  
24 ballistic panel.

25 Q. And approximately where were they located?

1           A.       One of the defects was located right here,  
2       which is right at the base of the notch that would fit up  
3       underneath the officer's chin. There's another defect that  
4       is a very small defect located approximately in this  
5       position, a very small defect, which could have been caused  
6       by a bullet fragment.

7                       And then another bullet defect which was  
8       over in this location, just on the left side of the --  
9       there's an insert with a metal panel on the inside. There's  
10      a bullet defect in that location.

11          Q.       Let's talk about that defect. State's Exhibit  
12      228, does that show where the bullet would have entered the  
13      outer portion of that vest or the covering of the vest?

14          A.       Yes. Right here in the seam of this part of  
15      the ballistic panel is a bullet defect. A bullet penetrated  
16      through here to the inner layers.

17          Q.       Now, showing State Exhibit 230, does that show  
18      the -- after the vest -- after the covering has been  
19      removed?

20          A.       Yes. The vest consists of the blue outer  
21      envelope and then on the inside there's a stacked layer of  
22      kevlar fabric which was encased in a white ballistic-type  
23      nylon fabric.

24          Q.       Are you able to tell the direction that this  
25      bullet struck the vest?

1           A.       Yes. It -- the bullet struck from a front to  
2 back, left to right, trajectory. The ballistic panel would  
3 fit over the officer's chest and the bullet would have  
4 entered from approximately this direction (demonstrating)  
5 from the officer's left to right, front to back.

6           Q.       Let me show you State Exhibit 231. Does that  
7 show the actual bullet that you recovered from the vest?

8           A.       Yes, it is. This is a bullet core or a lead  
9 core. This is the inner portion of a lead projectile with  
10 the copper -- typically it would be a copper jacketed  
11 projectile and the copper jacketing has been shed off the  
12 bullet core. So this is the inner portion of the bullet.

13          Q.       State Exhibit 233, does that show the defect  
14 to the top of the vest near the --

15          A.       Yes, it does.

16          Q.       That's what we see there?

17          A.       Right here. A bullet fragment or bullet  
18 penetrated through the outer layers and nicked the inner  
19 kevlar fabric, but did not penetrate through it.

20          Q.       Did that appear to be a direct hit or  
21 something that was just nicked at the top?

22          A.       It was just nicked at the top, somewhat of a  
23 glancing blow.

24          Q.       And let me show you State Exhibit 235. Does  
25 that show the tear on the other side of the vest?

1           A.       Yes. This is the bullet impact or bullet  
2 fragment impact on the -- would be on the upper right  
3 portion of that jacket.

4           Q.       Now, going back to the first defect we talked  
5 about where the bullet slug was actually taken out of the  
6 vest, did you examine Officer Hawkins' long johns and  
7 T-shirt to see if there were any corresponding defects to  
8 that?

9           A.       Yes, I did.

10          Q.       And did you find any?

11          A.       Yes, I did.

12          Q.       And what did you find exactly?

13          A.       There were corresponding rips and tears in the  
14 same general location on both the long john shirt and the  
15 short-sleeved T-shirt, which were worn below the bulletproof  
16 vest. The bullet didn't actually penetrate through the  
17 vest. It was just the rips and tears in the underlying  
18 shirt, long john shirt, and T-shirt, resulted from the  
19 physical impact of the bullet on the bulletproof vest.

20          Q.       That would be consistent with those occurring  
21 because of the bullet striking the ballistic vest and then  
22 the impact also causes a defect on the garments below; is  
23 that right?

24          A.       That is correct, yes.

25          Q.       Did you find the same types of defects on the



1 other defect that was in the ballistic vest on the other  
2 side?

3 A. No, I did not.

4 Q. Now, I believe you stated in your opinion that  
5 this particular defect on the ballistic vest may have been  
6 caused by a fragment; is that right?

7 A. That's correct, yes.

8 Q. Can you explain why you believe that?

9 A. This defect, obviously it penetrated through  
10 the fabric and it left a very small mark on the surface of  
11 the kevlar fabric, but it was not anywhere near the size of  
12 what a complete intact bullet or projectile would have made.  
13 This is what we normally would see in like a very small lead  
14 fragment or copper fragment that may have shed off of the  
15 original projectile, but it's a much smaller impact.

16 Q. Did you examine Officer Hawkins' uniform for  
17 defects and gunpowder residue?

18 A. Yes, I did.

19 Q. And did you find any that corresponded with  
20 the same defects that were on the ballistic vest?

21 A. Yes, I did.

22 Q. Before I get into the range of fire  
23 determinations, let me show you what has been marked as  
24 State Exhibit 240. Is this the actual ballistic panel that  
25 you examined?

1 A. Yes, it is.

2 MR. SHOOK: Your Honor, at this time we  
3 will offer State Exhibit 240.

4 MR. SANCHEZ: No objection, Your Honor.

5 THE COURT: No. 240 shall be admitted.

6 MR. SHOOK: May we have the witness step  
7 down for a moment?

8 THE COURT: He may.

9 Q. (By Mr. Shook) First of all, if you could  
10 just show the jury where the defects were located on 240  
11 that you just talked about?

12 A. Okay. There's -- the first defect is the  
13 small blackish colored marking on the vest. And that's  
14 where I described that there was probably a bullet  
15 projectile fragment that impacted with the vest right here.  
16 The next one is -- it's been roughed up, but it's this  
17 location right here. There was a bullet impact that just  
18 nicked the very edge of it. It did not penetrate through  
19 the bulletproof vest, but it did deflect across the top.  
20 And this is the majority or the main impact where the bullet  
21 core was recovered right here.

22 Q. And then the other defect on the other side,  
23 did it even make a mark on the actual --

24 A. Yeah, there's actually -- well, there was at  
25 the time of the analysis a small black skidmark that was in

1 this location here.

2 Q. And how about the third defect, did that  
3 actually make a mark on the --

4 A. Yes. There's a small mark and there are a few  
5 frayed fibers in that location.

6 Q. And if you could, using State Exhibit 209,  
7 demonstrate how this would have sat on Officer Hawkins' body  
8 in relation to how -- when the bullets were fired.

9 A. These panels are designed to cover the entire  
10 chest cavity. And they typically, if you are sitting down,  
11 they tend to ride up fairly high because the lap is pushing  
12 up on them. So they tend to ride up underneath the chin,  
13 higher up on the chest, generally in this position.

14 Q. The defect that we see at the top here, which  
15 you said was kind of a nick?

16 A. Yes.

17 Q. Would that be consistent with bullet wound No.  
18 6 that penetrated the chin and then went down into the neck  
19 and into the chest cavity?

20 A. Yes, it is.

21 Q. Especially if Officer Hawkins had his chin  
22 down toward his chest?

23 A. Yes.

24 Q. And then also where the slug was taken out  
25 here, did that correspond with the defect that was in

1 Officer Hawkins' shirt?

2 A. Yes, it did.

3 Q. The torn defect here in the pocket?

4 A. The defect in the shirt is located right here  
5 in the pocket. There's a bullet hole through the pocket  
6 here which went through the ballistic carrier, the blue, and  
7 into the vest.

8 Q. Now, did you conduct an examination on this  
9 shirt to try to determine range of fire?

10 A. Yes, I did.

11 Q. And would you tell the jury what the results  
12 of your examination were?

13 A. Yes. First of all, I identified numerous  
14 different bullet holes in the shirt. One is a small defect  
15 in the upper right where the bullet, the fragment, struck  
16 the shirt. There was one flake of gunpowder approximately  
17 an inch and a half to two inches from that hole, which  
18 really is insignificant as far as giving a range of fire. A  
19 single particle is not enough residue to give a range of  
20 fire.

21 But in this location there's a bullet  
22 entry hole that was surrounded by a very or fairly dense  
23 pattern of gunpowder residue, mostly to the left side of the  
24 bullet defects. Based on the analysis of the gunpowder  
25 pattern, that would be consistent with a gunshot in the

1 range of approximately six inches to about a foot and a  
2 half. There are then numerous --

3 Q. When you say six inches to a foot and a half,  
4 are you talking about from the target where the bullet  
5 struck to the muzzle of the weapon?

6 A. Yes. From the exiting portion of the barrel,  
7 muzzle of the weapon, to the actual clothing. So it's from  
8 the end of the barrel to the clothing.

9 Q. All right.

10 A. There are then several bullet defects in the  
11 left sleeve. It's where a bullet or bullets pass through  
12 folds in the fabric, leaving a pattern of multiple bullet  
13 holes. There's gunpowder surrounding those defects which  
14 would also be in a range of approximately six inches to  
15 about a foot and a half.

16 There are bullet defects in this patch  
17 over here. There's a missing section of fabric, which was  
18 compared to the -- earlier I talked about a piece of fabric  
19 that was compared, came from over here. Then in the back of  
20 the shirt, there are two bullet entry holes.

21 Q. Okay. Let's talk about those for a moment.  
22 Did you see a gunpowder pattern in relation to these two  
23 bullets that struck the back of the shoulder and into the  
24 back of the shirt?

25 A. Yes. There were two individual gunpowder

1 patterns surrounding each one of those defects. A pattern  
2 of gunpowder particles indicates a fairly close range of  
3 gunshot. And what I saw here would fall into a range of  
4 about six inches to a foot and a half between the muzzle end  
5 of the gun to the clothes.

6 Q. That powder pattern that you saw, did you also  
7 see that on the inner layer of the clothing?

8 A. Yes, I did.

9 Q. On the long johns as well as the T-shirt?

10 A. Yes, I did.

11 Q. In fact, in this particular situation in  
12 regard to the gunshot wound in the back and the shoulder,  
13 did that pattern increase on the undergarments?

14 A. Yes. There was actually more gunpowder on the  
15 innermost T-shirt than there was on the outer uniform shirt.

16 Q. And what does that tell you?

17 A. That tells me that the gun was close enough to  
18 the clothing so that the gunpowder exiting the weapon, it  
19 comes out at a very high velocity. It was able to impact  
20 the uniform shirt and penetrate through the long john shirt  
21 all the way into the inner T-shirt, which would tend to show  
22 that that range of fire is actually to the closer end of the  
23 six inches, rather than the foot and a half distance.

24 Q. Using State Exhibit 178, if you could, show  
25 the jury exactly what you are talking about on the range of

1 fire, close range of about six inches. Let me ask you to  
2 step around so all the jurors can see.

3 A. As I said, the range of fire is from the end  
4 of the barrel, which the muzzle end of the barrel, to the  
5 fabric. And for each one of these shots the range being  
6 about six inches, between six inches and a foot and a half,  
7 probably closer to six inches, would be probably in this  
8 range right here. Six inches here out to about a foot and a  
9 half, which would be right here. And that's for both this  
10 hole and this hole.

11 Q. And then, finally, did you check to see if  
12 there was any residue here with this, what we now know is an  
13 exit hole?

14 A. Yes, I do.

15 Q. What were your findings there?

16 A. There was a partial pattern of gunpowder on  
17 the left side of the bullet defects in this -- approximately  
18 in this area here, which normally would indicate a bullet  
19 entry hole, because the gunpowder, as gunpowder leaves the  
20 weapon, it's going to deposit on the first interposed target  
21 between the gun and the clothing or the victim. So I've got  
22 a gunpowder splatter here, which in my original examination  
23 I believed to be a bullet entry hole, but subsequently found  
24 out that that's a bullet exit hole from a shot coming  
25 through Officer Hawkins' head.

1 Q. What is another explanation, then, of how that  
2 gunpowder residue would have been left in that area?

3 A. That may have been overspray from one of the  
4 other gunshots from somewhere over here or over here, the  
5 gunpowder coming across the top of the shoulder depositing  
6 on the back of the shoulder, the left shoulder.

7 Q. Okay. Now, you also examined Officer Hawkins'  
8 uniform pants; is that correct?

9 A. Yes, I did.

10 Q. Did you find damage to the pants that would be  
11 consistent with being run over by a vehicle?

12 A. Yes, I did.

13 Q. Let me show you State Exhibit 236. What do we  
14 see there?

15 A. This is Officer Hawkins' uniform pants. And  
16 the pants are cut up. That's typically what the EMS  
17 personnel do. But on the pants you can see these scuff  
18 marks right here which would be up around the waistline and  
19 then down here down the legs. They are different scuff  
20 marks. They are rips and tears within the scuffed area.

21 Q. No. 237, does that show the other side?

22 A. Yes, it does. And these scuff marks here as  
23 well as here.

24 MR. SHOOK: We'll pass the witness, Your  
25 Honor.



1 MR. SANCHEZ: We have no questions of  
2 this witness, Your Honor.

3 THE COURT: Thank you, sir. You may  
4 stand down.

5 MR. SHOOK: May this witness be excused?

6 MR. SANCHEZ: We have no objection.

7 THE COURT: He may.

8 MR. SHOOK: Call James Garcia.

9 JAMES GARCIA,  
10 having been duly sworn, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. SHOOK:

14 Q. Would you tell us your name, please.

15 A. James Daniel Garcia.

16 Q. And how are you employed, sir?

17 A. Employed with the Texas Department of Criminal  
18 Justice.

19 Q. What do you do with them?

20 A. I'm a Sergeant.

21 Q. How long have you been employed with the Texas  
22 Department of Criminal Justice?

23 A. Going on ten years now, sir.

24 Q. What unit are you assigned?

25 A. The John B. Connally Unit.

1 Q. How long have you worked there?

2 A. Approximately five years.

3 Q. Sergeant Garcia, let me turn your attention  
4 back to December 13th of 2000. Were you employed at the  
5 unit at that time?

6 A. Yes, sir.

7 Q. And what were your duties at that time?

8 A. At the time I was the purchasing supervisor.

9 Q. And on that date of December 13th, 2000, was  
10 there an escape from the Connally Unit?

11 A. Yes, sir, there was.

12 Q. And does that involve seven inmates?

13 A. Yes, it did.

14 Q. Looking at the exhibit just over your right  
15 shoulder, are those the photographs and names of the seven  
16 individuals that escaped from the Connally Unit?

17 A. Yes, it is, sir.

18 Q. And did that include Patrick Murphy who we see  
19 in the upper right-hand corner?

20 A. Yes, sir.

21 Q. All right. As a result of that breakout, were  
22 you asked to do an inventory of items that were taken during  
23 the escape?

24 A. Yes, sir, I was.

25 Q. And was that part of your duties to maintain

1 inventory, that sort of thing?

2 A. Yes, sir.

3 Q. What types of items were taken during the  
4 breakout?

5 A. During the escape there was one Remington 870  
6 police Magnum shotgun, there was one Colt AR-15 assault  
7 rifle, and there were 14 Smith & Wesson .357 revolvers.

8 Q. Okay. Now, do you maintain for any weapon  
9 that's there at the prison, does it have serial numbers and  
10 TDCJ identification markers on them?

11 A. Yes, sir. Each weapon is identified with two  
12 numbers.

13 Q. All right. Let me show you what has been  
14 marked as State Exhibits 259 and 260. Are these -- do these  
15 posters reflect the types of weapons that were taken and  
16 their serial numbers and TDCJ numbers?

17 A. Yes, sir, it does.

18 Q. And this is information that you determined  
19 yourself from the records there at the prison?

20 A. Yes, sir.

21 MR. SHOOK: Your Honor, at this time we  
22 offer State Exhibits 259 and 260.

23 MR. SANCHEZ: We have no objection, Your  
24 Honor.

25 THE COURT: Nos. 259 and 260 shall be

1 admitted.

2 Q. (By Mr. Shook) First let me show you State  
3 Exhibit 259. The information contained here, are these the  
4 two long guns that were taken during the escape?

5 A. Yes, sir.

6 Q. No. 1, does that represent the AR-15 Colt  
7 Sport Target model?

8 A. Yes, sir.

9 Q. There are two individual unique numbers that  
10 were assigned to each weapon; is that right?

11 A. Correct. There's a manufacturer's serial  
12 number, as well as an agency's property number.

13 Q. And where would they be placed on the weapons?

14 A. They are stamped physically on the body of the  
15 weapon.

16 Q. Okay. Now, the AR-15 Colt Sport Target model,  
17 what type of weapon is that?

18 A. That's a 223 caliber assault rifle. It's the  
19 law enforcement version of the M16.

20 Q. And then the other gun that was taken, the  
21 long gun, was a Remington 870 P Express 12-gauge shotgun; is  
22 that right?

23 A. Yes, sir.

24 Q. Did you also determine how much ammunition was  
25 taken at the time for these two weapons?

1           A.       Yes, sir, we did. The shotgun, there were  
2 five rounds .12 gauge double aught buckshot. And for the  
3 assault rifle there were 15 rounds in the clip. For the  
4 revolvers there was 98 rounds of .38 caliber.

5           Q.       Let me show you State Exhibit 260. Does this  
6 poster reflect the 14 revolvers that were taken and their  
7 individual serial numbers as well as TDCJ numbers?

8           A.       Yes, sir.

9           Q.       And they were all the same type of weapon; is  
10 that right?

11          A.       Yes, sir.

12          Q.       And how much -- what type of ammunition was  
13 taken along with that?

14          A.       There were .38 caliber plus P ammo. There was  
15 98 rounds taken.

16          Q.       I'll show you State Exhibit 178. Does that  
17 appear to be one or could be one of the .357s that was  
18 taken, would be that type of weapon?

19          A.       Yes, sir, it is.

20          Q.       And there was a total of 98 rounds taken?

21          A.       98 rounds.

22                   MR. SHOOK: We'll pass the witness.

23                   MR. SANCHEZ: No questions, Your Honor.

24                   THE COURT: Thank you, Mr. Garcia. You  
25 may stand down.

1 MR. SHOOK: May this witness be excused?

2 MR. SANCHEZ: That's fine with us, Your  
3 Honor.

4 THE COURT: He may.

5 MR. SHOOK: Call Steve Bode.

6 STEVE BODE,

7 having been duly sworn, was examined and testified as  
8 follows:

9 DIRECT EXAMINATION

10 BY MR. SHOOK:

11 Q. Would you tell us your name, please.

12 A. My name is Steve Bode.

13 Q. And where do you reside, sir?

14 A. Currently in Colorado Springs.

15 Q. Okay. Have you -- how long have you lived in  
16 Colorado?

17 A. Off and on since 1968.

18 Q. Let me turn your attention to January of 2001.  
19 Were you living up in Colorado then?

20 A. Yes.

21 Q. And what town were you living in?

22 A. Woodland Park.

23 Q. Where is Woodland Park located?

24 A. Approximately 18 miles from Colorado Springs.

25 Q. Okay. And is it a big town? Small town?

1 A. It's a pretty small town.

2 Q. Where were you living in Woodland Park at that  
3 time?

4 A. At the Coachlight Motel and RV Park.

5 Q. And did you have a trailer there that you  
6 lived in?

7 A. Yes, sir.

8 Q. And what were your duties or what was your  
9 occupation back then at the RV park?

10 A. I was the nighttime manager and caretaker.

11 Q. Okay. Because of that were you on the  
12 property every day, both day and night?

13 A. Yes, sir.

14 Q. Did you have interaction with the people that  
15 stayed there?

16 A. Yes, sir.

17 Q. And what type of folks would you have come  
18 stay at the RV park?

19 A. Mostly travelers and people that are traveling  
20 in their RVs or just coming, bike tourists, and stuff like  
21 that.

22 Q. Is the RV park located kind of actually on a  
23 mountainside there?

24 A. Yes, sir.

25 Q. How long would people stay there at the park?

1 A. Well, I was there monthly, but basically  
2 anytime from one day to a couple of months.

3 Q. Okay. Now, let me turn your attention to New  
4 Year's Eve of 2000. Did some individuals come in, in an RV  
5 on that particular day?

6 A. Yes, sir.

7 Q. And were you present when they arrived?

8 A. Yes, sir.

9 Q. Looking at that exhibit over your right  
10 shoulder, State Exhibit 44, are those the individuals that  
11 came into the park on that day?

12 A. Yes, sir.

13 Q. And did, over the next three weeks, were they  
14 staying in the RV park?

15 A. Yes, sir.

16 Q. Did you, in fact, that day assist them in  
17 parking their RV and securing a spot for them?

18 A. Yes, sir, I did.

19 Q. Did you have interactions with all the  
20 individuals at some point in time over the next three weeks?

21 A. Yes, sir.

22 Q. Now, who was it you dealt with mostly that  
23 first day when they first came into the RV park?

24 A. Mr. Harper and Mr. Rivas.

25 Q. Okay. And at that time -- and is that how



1 Mr. Harper and Mr. -- well, is that how Mr. Rivas looked at  
2 that time?

3 A. Yes, sir.

4 Q. With the blond hair and that kind of goatee?

5 A. Yes, sir.

6 Q. What names were Mr. Harper and Mr. Rivas going  
7 by at that time?

8 A. George Rivas was going under Brother Luke and  
9 Larry Harper was going under the name of Brother Jim.

10 Q. Okay. And why were they using the names  
11 Brother Luke and Brother Jim?

12 A. They claimed to be traveling missionaries.

13 Q. Were the whole group supposed to be traveling  
14 missionaries?

15 A. Yes, sir.

16 Q. And were they in any other types of cars, any  
17 other cars, other than the RV that they were in?

18 A. Yes, sir.

19 Q. What types of cars were they?

20 A. They had a two-toned blue, sort of bluish  
21 silver Suburban or Chevy Suburban or GMC.

22 Q. Okay. Let me show you some photographs.  
23 First of all, State Exhibit 188 and 189, do you recognize  
24 those as photographs of being parts of the Coachlight RV  
25 Park?

1 A. Yes, sir.

2 Q. And State Exhibit 772, is that an aerial view  
3 of the park?

4 A. Yes, sir.

5 Q. And State Exhibits 773, 774, and 775, are  
6 those vehicles that you recognize that these individuals  
7 used while staying at the park?

8 A. Yes, sir.

9 MR. SHOOK: Your Honor, at this time we  
10 offer 188, 189, as well as 772 through 775.

11 MR. SANCHEZ: No objection.

12 THE COURT: Nos. 188, 189, Nos. 772  
13 through 775 shall be admitted.

14 Q. (By Mr. Shook) Let me show you No. 189 first.  
15 Does this show the RV park just off the highway?

16 A. Yes, sir, it does.

17 Q. And what's the number on that particular  
18 highway?

19 A. It's US-24.

20 Q. That's the highway that comes out of Colorado  
21 Springs?

22 A. Yes, sir.

23 Q. Then the next photograph, does that show the  
24 office for the RV park?

25 A. Yes, sir.

1 Q. Now, where did the residents stay once they  
2 checked in?

3 A. Well, we have several spaces in the very front  
4 right there. You can see part of them, and all the way up  
5 the hillside.

6 Q. So we can see one type of trailer or RV right  
7 at that location?

8 A. Yes, sir.

9 Q. Do the other spots just go up this  
10 mountainside?

11 A. Yes, sir.

12 Q. Let me show you State Exhibit 772. Is this an  
13 aerial view of the RV park?

14 A. Yes, sir, it is.

15 Q. What's this road, highway, right here?

16 A. That's US-24.

17 Q. Okay. And the entrance to the park is where?

18 A. Back to your right there.

19 Q. Okay. These buildings here, what would that  
20 be?

21 A. That's the office and the motel is to the  
22 left.

23 Q. And is there a road that just meanders up the  
24 mountainside?

25 A. Yes, sir.

1 Q. Kind of this direction?

2 A. Yes.

3 Q. All right. And then the top of the RV park,  
4 where is that located?

5 A. Right about where your deal is, maybe a little  
6 lower.

7 Q. Okay. Now, on the day that they drove in,  
8 they were driving an RV, as well as, you said, a Suburban?

9 A. Yes, sir.

10 Q. Let me show you State Exhibit 775. Is that a  
11 photograph of the Suburban they came into the park with?

12 A. Yes, sir.

13 Q. Now, at a later time did they come into the  
14 park with some other vehicles?

15 A. Yes, sir, they did.

16 Q. In fact, did they get rid of the Suburban?

17 A. Yes, sir.

18 Q. What type of vehicles did you see them driving  
19 later on?

20 A. They were driving a gray Jeep Cherokee and a  
21 maroon Ford E-150 conversion van.

22 Q. Let me show you State Exhibit 192. Is this a  
23 photograph of the RV that they were staying in?

24 A. Yes, sir.

25 MR. SHOOK: We'll offer State Exhibit

1 192.

2 MR. SANCHEZ: We have no objection, Your  
3 Honor.

4 THE COURT: No. 192 shall be admitted.

5 Q. (By Mr. Shook) Now, that's the photograph of  
6 the actual RV as it appeared there in the RV camp; is that  
7 right?

8 A. Yes, sir.

9 Q. Let me show you State Exhibit 773. Is this a  
10 photograph of the van that you saw them in?

11 A. Yes, sir, it is.

12 Q. And then the other vehicle, 774, is that the  
13 Jeep Cherokee that you saw them in?

14 A. Yes, sir.

15 Q. In particular you see the photograph of  
16 Patrick Murphy behind you?

17 A. Yes, sir.

18 Q. Was he one of the individuals that was staying  
19 in the RV?

20 A. Yes, sir.

21 Q. Where would you see him in and around the  
22 campsite?

23 A. Um, I saw him all over the campsite and a lot  
24 of times I would see him and Donald Newbury driving in and  
25 out of the park in the van.

1 Q. Okay. State Exhibit 773, is that the vehicle  
2 you usually saw him in?

3 A. Yes, sir.

4 Q. And we see in the photograph there he has  
5 blond hair, as well as a beard. Is that how he appeared at  
6 the time he was in the RV park?

7 A. Yes, sir.

8 Q. Do you see Mr. Murphy here today in the  
9 courtroom?

10 A. Yes, sir.

11 Q. Could you point out where he's sitting,  
12 please.

13 A. Sitting at the end of the table.

14 Q. The man in the gray suit with the yellow tie?

15 A. Yes, sir.

16 MR. SHOOK: Your Honor, if the record  
17 could reflect the witness has identified the defendant here  
18 in open court.

19 Q. (By Mr. Shook) Did you, in fact, you said  
20 that you assisted them in parking their RV into one of the  
21 spots on that first day; is that right?

22 A. Yes, sir.

23 Q. Let me show you State Exhibit 772. What area  
24 of the mountain did you park them?

25 A. It was straight up the hill. There's a

1 cottage approximately halfway up the hill on the left side  
2 of the photograph, and they were straight across from that  
3 cottage.

4 Q. And how long did they park there?

5 A. Between one and five days.

6 Q. After that did they request to move to another  
7 spot?

8 A. Yes, sir.

9 Q. And where was that?

10 A. It was up the hill, the highest point that we  
11 have.

12 Q. The highest campsite?

13 A. Yes, sir.

14 Q. Do you remember the number?

15 A. No. 17.

16 Q. Did you help actually park their RV there?

17 A. Um, no, sir. I assisted in locating, in  
18 relocating it for them.

19 Q. Okay. And Mr. Murphy and Mr. Newbury, you saw  
20 them in that van many times driving in and out of the park?

21 A. Yes, sir.

22 Q. Did you, in fact, do some work on that  
23 particular van?

24 A. Yes, sir.

25 Q. What type of work did you do?

1 A. Helped tighten the power steering belt.

2 Q. At some point in time did you -- did some of  
3 the individuals leave the park for a few days?

4 A. Yes, sir.

5 Q. Who was that?

6 A. Larry Harper and George Rivas.

7 Q. While they were gone were you ever asked to  
8 deliver a message to the others in the RV?

9 A. Yes, sir.

10 Q. And how many times did you do that?

11 A. Twice.

12 Q. Would you actually go up to the RV and speak  
13 to them?

14 A. Yes, sir.

15 Q. Did you actually -- were you able to look into  
16 the RV?

17 A. Yes, sir.

18 Q. When you delivered those messages, who was in  
19 the RV?

20 A. Patrick Murphy was sitting in the passenger  
21 side seat and Donald Newbury was sitting on the floor of the  
22 RV, just as you open the door.

23 Q. Did you ever see the individuals outside  
24 socializing at all at nights?

25 A. Yes, sir.



1 Q. And how many times did you see them do that?

2 A. A couple of times. There was one time when  
3 they was partying.

4 Q. When you say they were partying, what did you  
5 see?

6 A. They were sitting out at the picnic table  
7 behind the RV park or behind the RV with a fire going and  
8 drinking beer.

9 Q. How do you know they were drinking beer?

10 A. Because I cleaned up the camps and it was  
11 pretty obvious.

12 Q. All right. Now, were you present on the day  
13 that the police officers moved in and made some arrests?

14 A. Not at that time, no.

15 Q. Okay. Prior to that were there sometimes  
16 meetings held at the park on Thursday nights?

17 A. Yes.

18 Q. What types of meetings were those?

19 A. Actually, I believe, it was Wednesday nights.  
20 We had the Bible studies.

21 Q. Where was the Bible study held?

22 A. Upstairs above the office.

23 Q. Did any of the individuals that were staying  
24 in the RV come to any of those meetings?

25 A. Just one.

1 Q. Who was that?

2 A. Larry Harper.

3 Q. And how many meetings did he attend?

4 A. Um, three, I believe.

5 Q. Okay. And did he take part in the Bible  
6 study, that sort of thing?

7 A. Yes.

8 Q. Did any of the other individuals who were  
9 supposedly there as Christian missionaries ever come to the  
10 Bible meetings?

11 A. No, sir.

12 Q. And when you went and delivered this message  
13 to the people in the RV and saw Mr. Murphy and Mr. Newbury,  
14 did anything catch your attention when you delivered that  
15 message?

16 A. Yes, sir.

17 Q. What was that?

18 A. Mr. Newbury was sitting on the floor with his  
19 slacks on, but he did not have a shirt on and I saw a lot of  
20 tattoos on him.

21 Q. Okay. Why did that catch your attention?

22 A. They didn't look like tattoos that a Christian  
23 missionary would have.

24 Q. All right.

25 MR. SHOOK: That's all the questions that

1 I have at this time, Judge.

2 CROSS-EXAMINATION

3 BY MR. SANCHEZ:

4 Q. Mr. Bode, in the three weeks that you say  
5 these individuals were at the camp, the RV park, how much  
6 interaction did you have with Patrick Murphy?

7 A. I had a little bit of interaction with him. I  
8 talked to him a couple of times.

9 Q. More than once? I mean, more than four times?

10 A. Probably three or four times.

11 Q. Three or four times over a three-week period?

12 A. Yes, sir.

13 Q. Did you have any problems with Mr. Murphy?

14 A. No, sir.

15 Q. Did he cause any trouble for anybody?

16 A. No, sir.

17 Q. Did you have any complaints about him?

18 A. No, sir.

19 MR. SANCHEZ: That's all I have, Your  
20 Honor. Pass the witness.

21 MR. SHOOK: That's all the questions that  
22 we have, Judge.

23 THE COURT: Thank you, Mr. Bode, you may  
24 stand down.

25 MR. SHOOK: May he be excused, Your

1 Honor?

2 MR. SANCHEZ: That's fine with us, Your  
3 Honor.

4 THE COURT: He may.

5 MR. SHOOK: Call Sheriff Fehn.

6 FRANK FEHN,  
7 having been duly sworn, was examined and testified as  
8 follows:

9 DIRECT EXAMINATION

10 BY MR. SHOOK:

11 Q. Would you state your name, please.

12 A. Frank Fehn, F-E-H-N.

13 Q. And how are you employed, sir?

14 A. I'm retired, sir.

15 Q. Prior to your retirement, how were you  
16 employed?

17 A. I was the elected Sheriff of Teller County,  
18 Colorado.

19 Q. And how long had you been the elected Sheriff  
20 for Teller County?

21 A. I was elected in '98 and served 14 months  
22 prior to that as an appointed Sheriff.

23 Q. What were your duties as Sheriff?

24 A. Law enforcement, civil process, and keeper of  
25 the jail.

1 Q. Have you had prior law enforcement experience  
2 prior to being elected Sheriff?

3 A. Yes, sir, I did.

4 Q. What type of experience was that?

5 A. I was a peace officer with the Police  
6 Department, County of Nassau, New York, for 20 years, 8  
7 years as a patrol officer, 12 years as a detective. Of  
8 those 12 years the last seven plus, I was a homicide  
9 investigator.

10 Q. And now going back to Teller County, where is  
11 that in Colorado, geographically?

12 A. It's about 105 miles south and west of Denver,  
13 24 miles due west of Colorado Springs.

14 Q. What is the county seat in Teller County?

15 A. Cripple Creek.

16 Q. Is it the cities or towns in Teller County are  
17 very large or more of a rural area?

18 A. It's more rural, a bedroom community for  
19 Colorado Springs.

20 Q. How large is your department, or how large was  
21 your department at that time?

22 A. Approximately 70-odd people.

23 Q. Let me turn your attention to January 21st of  
24 2001 on a Sunday, and ask if some citizens from Teller  
25 County came to your offices on that afternoon?

1 A. They came in that evening, sir.

2 Q. Okay. And is Woodland Park one of the towns  
3 in Teller County?

4 A. It's one of the cities.

5 Q. Okay. Is it a very large city?

6 A. Approximately 7,000 people.

7 Q. The Coachlight RV Park, is that actually  
8 located in the city?

9 A. It is not. It's in the unincorporated portion  
10 of the county.

11 Q. That would be part of your jurisdiction as  
12 Sheriff?

13 A. Yes, sir.

14 Q. Did you, in fact, come to your offices that  
15 evening to speak with these residents of the RV park?

16 A. Yes, sir.

17 Q. Did they give you valuable information in  
18 regards to some possible suspects that were out of Texas?

19 A. They gave me information that I was not aware  
20 of from the bulletins that had been issued by the State of  
21 Texas and the Federal Government.

22 Q. Okay. Previous to them talking to you, were  
23 you aware of seven men being wanted out of Texas for escape  
24 charges as well as capital murder from Irving, Texas?

25 A. We had received what we call a bolo, be on the

1 lookout for, and also notifications by the media of the  
2 escapees from Texas.

3 Q. Once you talked with them, you felt that they  
4 had valuable information for you?

5 A. Yes, sir.

6 Q. What did you do then?

7 A. My tactical sergeant, Sergeant Bright, and I,  
8 got in an unmarked vehicle and responded to the Coachlight  
9 RV Park.

10 Q. In fact, did you contact any of the  
11 authorities in Texas?

12 A. Yes, sir. We contacted the task force that  
13 had been formed as a result of these escapees.

14 Q. Okay. Did you confirm there were warrants out  
15 for those charges?

16 A. Yes, sir.

17 Q. Okay. Then you went to the RV park that night  
18 yourself?

19 A. Yes, sir.

20 Q. What was your purpose in going there?

21 A. To find the location of their particular site  
22 to see what it would be like to approach it tactically,  
23 whether it would be easy, difficult. We drove within  
24 approximately 200 feet of it. We observed that there was  
25 only one vehicle there. With the information we had

1 received was there should be two vehicles there.

2 We then went to the east side of the RV  
3 park to see if we could approach it that way. We went to  
4 the north side and found that it would be a tactical  
5 nightmare to attempt to do this at night.

6 Q. Okay. What two vehicles were you looking for  
7 that you felt would be at the RV?

8 A. We were informed of a silver Jeep and an older  
9 model brown with a stripe Ford van.

10 Q. Was the van there at that time?

11 A. It was not.

12 Q. After making that determination that it would  
13 be unsafe to assault the vehicle, the RV, that evening, what  
14 did you do then?

15 A. Went back to my office, contacted the Woodland  
16 Park Police Department to tell them that we were going to  
17 contain the RV park. By that, I mean we're going to have  
18 people at all the exits and entrances to see if the van came  
19 back or whether the Jeep had left.

20 Q. Did you call on other law enforcement agencies  
21 to assist you in these matters?

22 A. I did, sir. I contacted the City of Colorado  
23 Springs Police Department and the El Paso County Sheriff's  
24 Office and the FBI from Denver.

25 Q. And did members of those departments come to



1 your headquarters there at Teller County?

2 A. Yes, sir.

3 Q. That evening did you come up with a plan as to  
4 how you were going to approach the suspects?

5 A. We received information at least one or  
6 possibly two of the suspects were in the habit of coming  
7 down for coffee in the RV office. So we decided that this  
8 would be the best time for us to make an apprehension, if  
9 possible, would be to separate them, take them if they came  
10 down for coffee and then find out what conditions were  
11 within the RV itself.

12 Q. Okay. What plan did you come up with to get  
13 into the RV park?

14 A. I have an RV of my own. I decided that it  
15 would be best if I went home, changed the license plates on  
16 my RV from the State of Colorado, because information was  
17 received that these folks had been in our county for about  
18 20 something days. They would be aware of what our local  
19 license plates looked like.

20 I put state of Utah plates on my RV, came  
21 back to the office, took 14 members of the FBI in the RV,  
22 went back to the RV park, the Coachlight. Seven members got  
23 out of my RV into the office to wait for those that were  
24 coming for coffee about 9:00.

25 Teller County was responsible for any

1 movement westward on the local highway, which is 24. El  
2 Paso County was responsible for any movement eastbound on  
3 Highway 24.

4 Q. Were you facing some problems as far as  
5 communicating with all the officers, using the regular type  
6 of communications you used on one of these missions?

7 A. The information that we received was that the  
8 individuals had radios with local law enforcement  
9 frequencies. We decided not to use radios. We used  
10 basically cell phone traffic.

11 Q. Now, after you had gotten a place inside the  
12 RV park, did any of the individuals actually come down for  
13 coffee that morning?

14 A. No, sir, they did not.

15 Q. What's the next thing that happened there?

16 A. At approximately 10:00, the Jeep exited the RV  
17 park with three subjects in it. It went out onto the  
18 highway and it was apprehended approximately a mile to a  
19 mile and a half east of the RV park by El Paso and Teller  
20 County deputies.

21 Q. Once that occurred did you get information  
22 confirming that these were, indeed, the men you were looking  
23 for?

24 A. We received information back that individuals  
25 by the name of Rodriguez, Garcia, and Rivas were occupants

1 in the vehicle and that there were two more occupants in the  
2 RV. We then went to the RV. I drove my RV to within about  
3 100, 150 feet of their RV and everybody exited and contained  
4 and surrounded their RV.

5 Q. Let me show you some photographs which have  
6 been marked as State Exhibit 777, 778, and 779, as well as  
7 780. Are those photographs of how the RV was positioned  
8 that morning when you secured it?

9 A. Yes, sir.

10 Q. Also, let me show you State Exhibits 261  
11 through 267. Do those also show photographs, aerial  
12 photographs, as well as photographs of the RV and a diagram  
13 of the RV park?

14 A. Yes, sir, it does.

15 MR. SHOOK: Your Honor, we'll offer State  
16 Exhibits 261 through 267, as well as 777 through 780.

17 MR. SANCHEZ: No objection.

18 THE COURT: Nos. 261 through 267 and 777  
19 through 780 shall be admitted.

20 Q. (By Mr. Shook) Let me show you State Exhibit  
21 777. As you approach the RV, is this as close as you got to  
22 it at the time you parked your RV?

23 A. Yes, sir, it is.

24 Q. And then the FBI, as well as the other Teller  
25 County deputies deployed from the RV?

1 A. Yes, sir.

2 Q. Once the officers were deployed around the RV,  
3 were there any instructions shouted into the RV?

4 A. Yes, sir. Deputy Kerr from Teller County  
5 identified ourselves as being representatives of the  
6 Sheriff's Office, commanded them to come out of the RV with  
7 their hands raised, that our intention was not to hurt them.  
8 Our intention was to take them into custody. And  
9 subsequently a Mr. Halprin exited the RV.

10 Q. Do you recall how long he was in the RV before  
11 he exited?

12 A. Fifteen minutes to a half hour.

13 Q. And how did he exit the RV?

14 A. He came out wearing trousers and a T-shirt.  
15 He was told to stop, to raise his hands, to raise his  
16 T-shirt, so we could observe the waistband of his trousers,  
17 beltline. He was then told to get on his knees, to come  
18 backwards towards my location. And when he got to my  
19 location, he was taken to his feet and taken into custody.

20 Q. Okay. And Randy Halprin is the man in the  
21 middle, I guess, on the bottom row; is that right?

22 A. This one here, yes, sir.

23 Q. The photograph we see on the monitor, does  
24 that show the area where Randy Halprin made his way down?

25 A. That's exactly where he was taken into

1 custody, between those trees.

2 Q. And State Exhibit 267, does this show kind of  
3 the road looking down from the RV?

4 A. Yes, sir, it does.

5 Q. That shed there, is that the area that you  
6 were located in?

7 A. Yes, it is.

8 Q. Once he was taken into custody, did you speak  
9 to him at all at that time?

10 A. Yes, sir, I did.

11 Q. And what information did you say to him?

12 A. He informed me that Mr. Harper, who was still  
13 in the RV, wanted to surrender to us with a condition, that  
14 we contact his father and he wanted to speak to his father  
15 on a cell phone before he would surrender. And I observed  
16 that he had only one shoe on and he had a sandal on his  
17 other foot. And he informed me that he had injured his  
18 foot. And so consequently I directed two of my deputies to  
19 take him to a medical center for medical treatment.

20 Q. On that same day was he returned from the  
21 medical center and placed in the Teller County Jail?

22 A. Yes, sir, he was.

23 Q. After Mr. Halprin was taken into custody, what  
24 was done with -- what efforts were made to try to get Larry  
25 Harper to exit the RV?

1           A.       We continued to explain to him that we were  
2 attempting to contact his father, that we would permit him  
3 to use the cell phone. And, again, we continued to tell him  
4 to come out, that our intention was not to hurt him, that if  
5 he surrendered, he would not be hurt. And subsequently we,  
6 depending upon a location you were in, I only heard one  
7 gunshot, but others say they heard two gunshots.

8           Q.       Was entry eventually made into the RV?

9           A.       Yes, sir, it was.

10          Q.       And how was that done?

11          A.       An agent from the FBI discharged three tear  
12 gas rounds by shotgun into the RV and then the -- waited a  
13 moment or three for the tear gas to take effect, forced a  
14 lock on the RV door and made entry.

15          Q.       At that time was the body of Larry Harper  
16 found in the RV?

17          A.       Yes, sir, it was.

18          Q.       Did he appear to be deceased?

19          A.       Yes, sir, he was.

20          Q.       Was a search done of the RV at that time?

21          A.       No, sir, it was not.

22          Q.       Was the RV secured and then at a later time  
23 did the FBI search team come there and do a thorough search?

24          A.       I directed everybody to exit the RV, placed  
25 Deputy Saine (phonetic) to take custody of the RV and to

1 protect it and secure it until the FBI did their search.

2 Q. So that evening you had Larry Harper deceased  
3 in the RV and you had four suspects in your jail; is that  
4 correct?

5 A. Yes, sir.

6 Q. That would be George Rivas, Michael Rodriguez,  
7 Randy Halprin, and Joseph Garcia?

8 A. That is correct, sir.

9 Q. At that point in time, you still had two  
10 suspects that were on the loose?

11 A. Yes, sir.

12 Q. Donald Newbury and Patrick Murphy?

13 A. Yes, sir.

14 Q. And then the van, you didn't know the  
15 whereabouts of the van at that time?

16 A. We did not.

17 MR. SHOOK: We'll pass the witness.

18 CROSS-EXAMINATION

19 BY MR. SANCHEZ:

20 Q. Sheriff, when Rivas, Rodriguez, and Garcia  
21 were apprehended, were they pulled over on the side of the  
22 road or had they stopped somewhere?

23 A. They had pulled into a convenience store gas  
24 station to get gas. And when they pulled up, they were  
25 apprehended by the Tactical Team coming from front and rear.

1 Q. Was that a fairly peaceful apprehension of  
2 those three individuals?

3 A. Well, if you call somebody staring down a  
4 barrel of a shotgun and/or an automatic weapon peaceful, I  
5 guess it was peaceful.

6 Q. In other words, they didn't try to shoot back  
7 or anything like that, correct?

8 A. They were not given the opportunity, sir.

9 Q. So they were taken without incident, correct?

10 A. Correct.

11 Q. And this other individual, Halprin, was --  
12 also, he gave himself up when he came out?

13 A. That's correct.

14 Q. He wasn't armed at that time?

15 A. Not at the time.

16 MR. SANCHEZ: That's all I have, Your  
17 Honor. I pass the witness.

18 MR. SHOOK: May this witness be excused?

19 MR. SANCHEZ: That's fine with us, Your  
20 Honor.

21 THE COURT: Thank you, Sheriff, you may  
22 stand down and be excused. Counsel, please approach.

23 (Bench conference)

24 THE COURT: We'll stand in recess for the  
25 noon hour. We'll stand in recess until 1:30.



1 [Jury out]

2 [Jury in]

3 THE COURT: Please be seated.

4 Mr. Wirskye, call your next witness.

5 MR. WIRSKYE: Call Roddy Alford.

6 RODDY ALFORD,

7 having been duly sworn, was examined and testified as  
8 follows:

9 DIRECT EXAMINATION

10 BY MR. WIRSKYE:

11 Q. Deputy, can you tell us your full name.

12 A. Roddy Alford.

13 Q. And how are you employed, sir?

14 A. I'm with El Paso County Sheriff's Office in  
15 Colorado Springs.

16 Q. And where is -- El Paso County encompasses  
17 Colorado Springs?

18 A. That's correct.

19 Q. Is Teller County your nextdoor neighbor up  
20 there?

21 A. Yes, it is.

22 Q. How long have you been a deputy with El Paso  
23 County?

24 A. Ten years.

25 Q. And where are you currently assigned?

1 A. I'm assigned to the high school as a school  
2 resource officer.

3 Q. What do you do there as a school resource  
4 officer?

5 A. I'm liaison for the Sheriff's Office. I  
6 prosecute -- not prosecute, I take all the crimes that occur  
7 in high school.

8 Q. Do you also have another duty with the  
9 Sheriff's Department?

10 A. SWAT, SWAT member.

11 Q. And how long have you been on the SWAT Team?

12 A. Eight years.

13 Q. Before joining the Sheriff's Office, you have  
14 some military background; is that right?

15 A. Yes. I was in the military for five years.

16 Q. What branch?

17 A. Army.

18 Q. Let me direct your attention back to January  
19 21st of the year 2001. I think it was a Sunday, but did you  
20 get called out on your SWAT Team?

21 A. Yes, we did.

22 Q. Where were you when you got the call?

23 A. I was at my residence in Colorado Springs.

24 Q. How many people are on your SWAT Team?

25 A. We have a total of 15 members.

1 Q. And y'all frequently train on a regular  
2 schedule, that type thing?

3 A. Yes, we do.

4 Q. What type of call did you get?

5 A. At the time we didn't -- as we got the page,  
6 they didn't tell us, inform us, what the call was until we  
7 got there. And jokingly one of the guys said, "What is it,  
8 the Texas Seven sighting"? And our lieutenant said, "Yes,  
9 it is."

10 Q. So it actually turned out to be the Texas  
11 Seven?

12 A. Yes, it was.

13 Q. Once you got the call, where did y'all meet?

14 A. We met at our law enforcement bureau and then  
15 after we met there, we headed up to Teller County.

16 Q. You and Teller County kind of have a  
17 cooperative agreement for situations like this; is that  
18 right?

19 A. That's correct.

20 Q. Once you got to Teller County, what happened?

21 A. Once we got there, our commander in Teller  
22 County, they got together and talked over their strategy,  
23 their plan, and to the following day.

24 Q. And some of the tactical officers went up and  
25 surrounded an RV at the Coachlight RV Park; is that right?

1 A. That's correct.

2 Q. You were not one of those officers?

3 A. No, I was not.

4 Q. You were assigned to one of the vehicle  
5 takedown teams?

6 A. Yes, I was.

7 Q. How many of those teams did you have out  
8 there?

9 A. Two.

10 Q. Why did you have two different teams?

11 A. Because of the area and one team was  
12 responsible for them traveling west and we were responsible  
13 for them, if they were traveling east.

14 Q. Once you come out of that RV park, there is a  
15 US-24; is that right?

16 A. That's correct.

17 Q. And you go eastbound or westbound?

18 A. That's correct.

19 Q. And I guess two different teams, depending on  
20 which way suspects went?

21 A. Yes.

22 Q. How many individuals are on each team?

23 A. Probably five.

24 Q. And how -- what were y'all riding?

25 A. Our team was in a conversion van, which is, I

1 guess, a luxury van that -- a normal van. And our other  
2 team was in our SWAT van that has all our other equipment  
3 inside of it.

4 Q. How were you and the other officers outfitted?

5 A. We were carrying our M16 and our duty weapon.

6 Q. What were you wearing?

7 A. We were wearing our black fatigues with the  
8 Sheriff's Office SWAT emblem on it.

9 MR. WIRSKYE: May I approach, Your Honor?

10 THE COURT: You may.

11 Q. (By Mr. Wirskye) Deputy, let me show you a  
12 series of photographs and one diagram marked for  
13 identification as State 268 through 282. We went over these  
14 outside the presence of the jury; is that right?

15 A. Yes.

16 Q. And these photos and diagrams depict the areas  
17 we're going to be talking about concerning the arrest you  
18 made; is that correct?

19 A. That's correct.

20 MR. WIRSKYE: Your Honor, we offer  
21 State's 268 through 282.

22 MR. SANCHEZ: We have no objection, Your  
23 Honor.

24 THE COURT: Nos. 268 through 282 shall be  
25 admitted.

1 Q. (By Mr. Wirskye) Was there a command post out  
2 there for all the law enforcement that was assembled?

3 A. Yes, there was.

4 Q. And where was that?

5 A. It was located behind the Safeway on Highway  
6 24 in a strip mall.

7 Q. And that was right down from the RV park; is  
8 that right?

9 A. That's correct.

10 Q. Let me show you State 269 and let me give you  
11 a laser pointer as well. If you could kind of, using the  
12 laser pointer, orient the jury as to what we're looking at  
13 in that photograph.

14 A. Here's the intersection here. And over to the  
15 left would be the strip mall, the Safeway. And you have the  
16 west here and this direction would be east and then you have  
17 north and you have your south.

18 Q. Where is the RV park located?

19 A. RV park is located west over in this area.

20 Q. Back in those trees?

21 A. Yes, somewhere up in there.

22 Q. Where were the two vehicle assault teams  
23 located?

24 A. The first, the primary vehicle assault team  
25 was located over in this area here. And the secondary, the

1 one that I was involved in, we were located over here.

2 Q. You were on the eastbound team?

3 A. That's correct.

4 Q. And about 11:00 in the morning of the 22nd,  
5 that Monday, did y'all get word that a vehicle had left the  
6 RV park?

7 A. That's correct.

8 Q. And what type of vehicle was that?

9 A. It was a gray Jeep.

10 Q. And where did that vehicle go after it left  
11 the RV park?

12 A. After it left the RV park, it went into the  
13 Safeway strip mall and I guess they dropped off some movies.  
14 And once they left there, they were headed east on Highway  
15 24.

16 Q. There's a Blockbuster located in that strip  
17 mall; is that right?

18 A. That's correct.

19 Q. It's your understanding some movies were  
20 returned?

21 A. That's correct.

22 Q. Once they started heading eastbound, what  
23 happened next?

24 A. One they started heading eastbound, our  
25 commander gave us the go that if that vehicle passed us, to

1 go ahead and follow it and if it turned into a convenience  
2 store, that we were to take that vehicle down.

3 Q. How many vehicles did you have on your team?

4 A. Two.

5 Q. You later came to find out there were some FBI  
6 personnel behind y'all; is that right?

7 A. That's correct.

8 Q. How far were you able to follow the Jeep?

9 A. Probably about half a mile.

10 Q. And did the Jeep stop at some point?

11 A. Yes, it did, into the Western Convenience  
12 Store.

13 Q. And let me show you State's 272 and see if you  
14 recognize that?

15 A. That's the Western Convenience Store.

16 Q. Can you show us where the Jeep pulled in?

17 A. The Jeep pulled right in this island here and  
18 that's where the takedown took place.

19 Q. And let me show you State's 282. Is that kind  
20 of a diagram where everyone was located during the takedown?

21 A. Yes, it is.

22 Q. Using that diagram, State 282, can you kind of  
23 walk us through the arrest?

24 A. Okay. You have SWAT one, which was -- that's  
25 my lieutenant. That's a blocking vehicle. You have the



1 suspect vehicle here and you have another SWAT 3, this  
2 vehicle here, they're to contain all the people here and  
3 then you have the takedown vehicle, which I was in, here.

4 And once that vehicle pulled in, we  
5 pulled in right behind. You have your ram blocker vehicle,  
6 which is SWAT 1 here, stopping their movement forward. And  
7 we're stopping their movement back. And all five of us  
8 exited the vehicle and approached the Jeep, giving those  
9 guys commands, getting their hands up, Sheriff's Office, let  
10 us see your hands. And during that time we proceed to take  
11 down the vehicle.

12 Q. And a vehicle takedown is something that you  
13 and your team routinely train on?

14 A. Yes, it is.

15 Q. In general, how were you trained at that time  
16 to take down the vehicle?

17 A. The key to it is element of surprise. The  
18 quicker you can get there before they know what happens,  
19 before they can react, will depend on how well the takedown  
20 goes. During that time it was five of us. Two guys were  
21 responsible for the driver's side, which would be the driver  
22 and the passenger in the back. And then you have two other  
23 guys that are responsible for the passenger's side, front  
24 and rear. And then your fifth guy is responsible for the  
25 trunk area of the vehicle.

1 Q. That was the plan you used that day?

2 A. Yes, it is.

3 Q. How many people were in that Jeep?

4 A. Three people.

5 Q. And your primary responsibility was the  
6 driver?

7 A. Was the driver, correct.

8 Q. Once you get out of your car, tell us what  
9 happens.

10 A. Once we get out, like I say, we approach the  
11 vehicle. I approached the driver's side. And at that time  
12 all three occupants had their hands up and the vehicle is  
13 running. And when I asked him, does he have the vehicle  
14 running or is it still in gear and he said, yes, it is. I  
15 opened the door and I tell him to keep his hands where they  
16 are at and I put the vehicle in park and then shut the  
17 vehicle off.

18 Q. The person you are talking about, the driver,  
19 that's George Rivas?

20 A. That's correct.

21 Q. Obviously, you didn't use the same tone of  
22 voice out there that you used in here?

23 A. No, I didn't.

24 Q. What type of commands are you giving them?

25 A. We're giving them precise commands, keep your

1 hands up where I can see them, don't move, Sheriff's Office,  
2 keep your hands up where I can see them.

3 Q. By the time you get that far with the driver,  
4 is the rest of the vehicle surrounded?

5 A. Yes, it is.

6 Q. Do you have a weapon out?

7 A. I do. I have an M16.

8 Q. And where is the M16 pointed with respect to  
9 George Rivas?

10 A. Once I entered the vehicle, the weapon is  
11 pointed to his chest.

12 Q. And how does he react once he sees you?

13 A. Um, surprised. So he doesn't say anything.  
14 He just followed my commands and then before I reached into  
15 the vehicle, I asked him does he have any weapons on him and  
16 he says, "Yes, I have a fanny pack." And I said, "Well,  
17 keep your hands up where I can see them."

18 Q. What did you do at that point?

19 A. At that point in time I reached in and put the  
20 vehicle in park and turned the vehicle off.

21 Q. How were you able to keep a gun on him and  
22 also reach into the vehicle and turn it off?

23 A. Um, as you can see up here, there's an M16,  
24 which is a smaller version of what I carry.

25 MR. WIRSKYE: May I approach, Your Honor?

1 THE COURT: You may.

2 Q. (By Mr. Wirskye) Deputy, I think you are  
3 pointing to a weapon that has been marked for identification  
4 as State Exhibit 317; is that correct?

5 A. That's correct. The weapon I use is half this  
6 size. It's a lot smaller. So when I had my weapon in one  
7 hand, I'm able to put it to his chest, reach in and put it  
8 in park, and turn it off at the same time.

9 Q. Did you have your finger on the trigger?

10 A. No, I didn't.

11 Q. Why not?

12 A. Because we're not trained to have our finger  
13 on the trigger, unless we're ready to engage.

14 Q. He told you he had a weapon in his fanny pack.

15 A. Yes, he did.

16 Q. If he had not complied with your commands or  
17 made a move to the weapon, what were you prepared to do?

18 A. I would have shot him.

19 Q. So he tells you he has a weapon. You reach in  
20 and turn off the car.

21 A. Yes.

22 Q. What happens next?

23 A. After that I take Rivas out of the vehicle and  
24 I place him onto the ground. And I believe there's two  
25 Teller County deputies there, which I give them to him -- I

1 give him to them, so they take control of him and then I  
2 proceed around to the passenger's side where Rodriguez is at  
3 the back and we proceed to move Rodriguez out of the  
4 vehicle.

5 Q. So y'all take them out one by one?

6 A. Yes, we do.

7 Q. And I guess you have a secondary team that  
8 takes control of the suspect?

9 A. That's correct, the arrest team.

10 Q. Did you actually search George Rivas?

11 A. No, I didn't.

12 Q. You said next you moved to the rear seat  
13 passenger?

14 A. Correct.

15 Q. And that was --

16 A. Rodriguez.

17 Q. What happened when you got back there?

18 A. I had officer Cole remove him out of the  
19 vehicle and then once he was placed on the ground and the  
20 arrest team took control of him, we proceeded to move to  
21 Garcia. And at that time I was going to reach in and grab  
22 Garcia, but he had his hands up and he kept fidgeting,  
23 making fidgeting motions. So I told him, "You need to stop  
24 and obey what I'm telling you." And at that time Deputy  
25 Callahan said, "Get another officer up here without a

1 weapon." And then he proceeded to move him out of the  
2 vehicle.

3 Q. How did you take those fidgety motions or what  
4 did it mean to you?

5 A. To me it was an aggressive movement to me  
6 because he's waiting to see what was going to happen, did he  
7 have enough time to reach for his weapon that was in his  
8 fanny pack and the stare down that he gave me as if he's  
9 deciding, should I make this move or not.

10 Q. Obviously, he decided not to do anything at  
11 that point?

12 A. That's correct.

13 Q. Once you got him out of the car, what  
14 happened?

15 A. Once we got him out of the car, the arrest  
16 team took control of him and then at that time our job is  
17 done there. So the rest of the SWAT Team, we get back in  
18 our vehicle and we head up to the trailer park.

19 Q. The entire takedown of the vehicle from the  
20 time you first approached it to the time you had three in  
21 custody, how long did that take?

22 A. Probably less than five minutes.

23 Q. And you didn't personally search any of the  
24 three individuals from that car?

25 A. No, I didn't.

1 Q. Let me show you State's 274 and see if you  
2 recognize that photo?

3 A. That's the vehicle that they ran.

4 Q. And State's 275, another picture, does that  
5 also depict the Jeep that they were in?

6 A. Yes, this is.

7 Q. Once you finished there, you said that you  
8 went back up to the RV park?

9 A. Yes.

10 Q. At that point there were still individuals in  
11 the RV?

12 A. That's correct.

13 Q. What did you do once you got up to the RV  
14 park?

15 A. We set up a perimeter around the RV park and  
16 then, I believe, the negotiators came up and started talking  
17 to one of the suspects that were inside.

18 Q. To what do you attribute, I guess, the  
19 successful peaceful arrest of the three suspects?

20 A. I would say the element of surprise,  
21 overtaking the vehicle before they knew what hit them.

22 MR. WIRSKYE: I'll pass the witness, Your  
23 Honor.

24 MR. SANCHEZ: I have no questions, Your  
25 Honor.

1 THE COURT: Thank you, Deputy.

2 MR. WIRSKYE: May he be finally excused,  
3 Your Honor?

4 MR. SANCHEZ: That's fine with us, Your  
5 Honor.

6 THE COURT: He may.

7 MR. WIRSKYE: Call Special Agent  
8 Petoskey.

9 WILLIAM PETOSKEY,  
10 having been duly sworn, was examined and testified as  
11 follows:

12 DIRECT EXAMINATION

13 BY MR. WIRSKYE:

14 Q. Sir, could you tell us your full name.

15 A. My name is William Petoskey.

16 Q. And how are you employed?

17 A. I'm employed as a Special Agent with the  
18 Federal Bureau of Investigation.

19 Q. How long have you been with the FBI?

20 A. Approximately seven years.

21 Q. Where are you currently assigned?

22 A. To the Colorado Springs Resident Agency.

23 Q. And what do you do there in Colorado Springs?

24 A. I'm a Special Agent currently assigned to the  
25 National Security Squad. Prior to that I was assigned to



1 the Violent Crime Squad.

2 Q. And you assigned to the Violent Crime Squad  
3 back in January of 2001?

4 A. Yes, I was.

5 Q. What did you do prior to coming to the FBI?

6 A. I was a high school teacher.

7 Q. Let me direct your attention back to January  
8 21st of 2001. About 10:00 in the evening did you get a call  
9 or a page to go to Teller County, Colorado?

10 A. Yes, I did.

11 Q. What was the nature of that call?

12 A. I received a phone call from Special Agent  
13 Dean Aker, who advised me that the Texas Seven -- or, excuse  
14 me, fugitives from the state of Texas has been located in  
15 Woodland Park, Colorado.

16 Q. Did you know who he was talking about?

17 A. Yes, I did.

18 Q. Were people in law enforcement pretty familiar  
19 with those individuals at that point in time?

20 A. Yes, sir.

21 Q. Once you got that call, what did you do?

22 A. I left my residence and drove to Divide,  
23 Colorado.

24 Q. What is in Divide, Colorado?

25 A. The Teller County Sheriff's Office.

1 Q. Once you got there, what happened?

2 A. I was briefed by other law enforcement  
3 agencies to the information they knew about the fugitives  
4 and proceeded to set up a surveillance near the Coachlight  
5 RV Park.

6 Q. And what was your specific job in terms of  
7 keeping surveillance on the Coachlight RV Park?

8 A. I was located east of the Coachlight RV Park  
9 off Highway 24 to keep an eye on the entrance and any  
10 traffic leaving the park that would head eastbound on  
11 Highway 24.

12 Q. Special Agent, let me show you a photograph,  
13 State's 269, and see if you recognize that?

14 A. Yes, I do.

15 MR. WIRSKYE: May I approach the witness,  
16 Your Honor?

17 THE COURT: You may.

18 Q. (By Mr. Wirskye) Special Agent, if you could  
19 take this laser pointer and just kind of orient the members  
20 of the jury to where your position was for surveillance that  
21 night.

22 A. I was located off this road here, which is  
23 located east of the Coachlight RV Park, which is located  
24 right here.

25 Q. And what time did you get in position for

1 surveillance?

2 A. Approximately 2:00 a.m.

3 Q. And how long did you stay out there on the  
4 perimeter?

5 A. Until approximately 5:00 a.m.

6 Q. And we're into Monday, now, the 22nd?

7 A. Yes, sir.

8 Q. Anything happen between those hours?

9 A. Nothing.

10 Q. At about 5:00 a.m. did you get a call to go  
11 somewhere else?

12 A. Yes, I did.

13 Q. Where was that?

14 A. I went back to the Teller County Sheriff's  
15 Office.

16 Q. And why did you do that?

17 A. I was told to help write a search warrant.

18 Q. Soon after that did you get another call to go  
19 somewhere else?

20 A. Um, I actually stayed in the Teller County  
21 Sheriff's Office for most of the morning, working on the  
22 search warrant.

23 Q. Okay. Did you at some point attend a briefing  
24 of all the law enforcement members that were at the scene?

25 A. Yes, I did.

1 Q. And where did that happen?

2 A. At the Teller County Sheriff's Office.

3 Q. Did y'all have another remote command post set  
4 up close to the RV park?

5 A. Yes, we did. The command vehicles from the  
6 law enforcement agencies were located behind the Safeway  
7 grocery store.

8 Q. Okay. I just put up a photograph, State's  
9 271. Does that show the area of the Safeway in the strip  
10 mall?

11 A. Yes, it does.

12 Q. Can you show the members of the jury where  
13 that command post was set up?

14 A. On the backside of the Safeway is a loading  
15 dock area where the store receives its material. It is  
16 located from that area -- the RV park is actually located  
17 across the street in this vicinity.

18 Q. And that's Highway 24, US-24 there?

19 A. Yes, sir, this is Highway 24.

20 Q. And at some point did you make your way to the  
21 command post behind the Safeway?

22 A. Yes, I did.

23 Q. While you were there, did y'all get word that  
24 a vehicle had left the RV park?

25 A. Yes, I did.

1 Q. A gray Jeep?

2 A. Yes, sir.

3 Q. And what happened once that vehicle left the  
4 RV park?

5 A. I heard on the radio that a Jeep had left the  
6 RV park, had proceeded a short ways down Highway 24, and had  
7 entered the parking lot of the Safeway grocery store.

8 Q. Did that cause some alarm for the law  
9 enforcement members that were behind the Safeway?

10 A. Yes, it did. It was a very big concern  
11 because the vehicles that were located back here were all  
12 well marked as law enforcement agencies, command vehicles,  
13 police units, and so they were all located behind here,  
14 trying to find a way to get out of the area to not be  
15 detected by the Jeep that had been located in the parking  
16 lot.

17 Q. For lack of a better term, a brief moment of  
18 panic, I guess?

19 A. Yes, sir.

20 Q. Okay. Did the suspects in the gray Jeep ever  
21 see y'all?

22 A. Not to my knowledge, sir.

23 Q. What happened next?

24 A. The gray Jeep exited the Safeway parking lot,  
25 heading eastbound on Highway 24. And I had heard through

1 overbearing on my radio that the Jeep had exited the parking  
2 lot, headed eastbound on Highway 24. From my vantage point,  
3 this Safeway is located more up on a hill. I could see the  
4 back of the Jeep heading down the hill.

5 Q. And did the FBI have a plane up in the air?

6 A. Yes, we did.

7 Q. Tell us about that.

8 A. The FBI has a plane and a group of individuals  
9 known as our Special Operations Group, SOG for short. And  
10 they will conduct aerial surveillance and they also enhance  
11 our communication systems when we're in mountainous areas.

12 Q. And that's who you heard on the radio  
13 describing the path of the Jeep?

14 A. Yes, sir.

15 Q. Let me show you a photograph marked State  
16 Exhibit 270. See if you can recognize that as a realtime  
17 digital photograph that your SOG plane took.

18 A. Yes. This is the Safeway itself. This is  
19 where we were located at the time the vehicle had entered  
20 into the parking lot. This, again, is eastbound Highway 24.

21 Q. Okay. And what happened when you got in  
22 behind that gray Jeep?

23 A. As the radio communication, again, I overheard  
24 say the Jeep was heading westbound -- excuse me, eastbound.  
25 And I visibly observed the Jeep going down here, myself and

1 my boss got into an SUV and proceeded out of the Safeway  
2 parking lot onto eastbound Highway 24 in pursuit of the  
3 Jeep.

4 Q. At that point when you got in behind the Jeep,  
5 did you have any idea that Teller County and El Paso County  
6 had SWAT guys behind the Jeep, too?

7 A. No, sir.

8 Q. Why not?

9 A. Because I had an FBI radio and I did not pick  
10 up the Teller County or the El Paso County SWAT radios when  
11 I was located behind the Safeway parking lot.

12 Q. As y'all proceeded down 24, what happens next?

13 A. The vehicle, the Jeep, is heading eastbound on  
14 Highway 24 followed by, I believe, two sport utility  
15 vehicles and also myself and my boss in a Chevy Tahoe. It  
16 proceeded eastbound on 24 until it pulled into a Western  
17 Convenience Store.

18 Q. Let me show you this diagram, State's 282, and  
19 see if you recognize that as the convenience store.

20 A. Yes, I do.

21 Q. Did you observe the deputies take down that  
22 vehicle?

23 A. Yes, I did.

24 Q. What was your role once you got to the scene?

25 A. Specifically, stay out of the way.

1 Q. Okay. Kind of a secondary support role?

2 A. Yes, sir. As we pulled into the vehicle --  
3 pulled into the parking lot of the Western Convenience  
4 Store, the -- our vehicle was parked over here to the west  
5 of where the subject vehicle, which is indicated by the  
6 laser here. Upon parking and stopping here, my boss  
7 recognized that these other vehicles were tactical teams,  
8 being involved in the takedown of the vehicle.

9 Q. And y'all watched that takedown happen?

10 A. Yes, sir.

11 Q. Once those three individuals were in custody,  
12 what was your role at that point?

13 A. I was located back here and what was  
14 determined at the time was that the vehicles, marked police  
15 units, would pull up here. The individuals would be removed  
16 from the vehicle, brought back to me. They would be put  
17 into a marked unit and those marked police cars would  
18 transport to the Teller County Sheriff's Office.

19 Q. What contact did you specifically have with  
20 George Rivas?

21 A. Mr. Rivas was taken off of his -- out of his  
22 vehicle and placed on the ground. I observed the taking out  
23 of the vehicle by the SWAT Team and, also, I observed  
24 Colorado Springs Police Detective Delmar Wedge search Mr.  
25 Rivas when he was located on the ground. Mr. Rivas, while



1 being escorted by Police Detective Delmar Wedge brought him  
2 back to a vehicle waiting right here.

3 As they walked by my location, Colorado  
4 Springs Police Detective Delmar Wedge handed me a gun and  
5 said, "This was taken off him. Maintain custody of it."  
6 And George Rivas was placed in a vehicle located behind mine  
7 and was transported.

8 Q. You had actually seen that gun come off Rivas?

9 A. Yes, sir.

10 Q. So you took possession of Rivas' weapon; is  
11 that right?

12 A. Yes, sir.

13 Q. Did you have any contact with Garcia?

14 A. Yes, I did.

15 Q. Can you tell us about that?

16 A. Mr. Garcia was removed from the vehicle and  
17 was handcuffed and brought back to my location here. As I  
18 stood, again, by my vehicle, I had asked -- and I do not  
19 recall who it was -- the escorting officers, if he had been  
20 searched and they were not sure regarding how much or who  
21 had searched him. So I proceeded to pat down Mr. Garcia and  
22 search him for anything that was on his person or property.

23 Q. And what did you find when you searched  
24 Mr. Garcia?

25 A. Mr. Garcia was carrying a gun and also a

1 wallet.

2 Q. Okay. Do you remember where the gun was  
3 located on him?

4 A. I believe it was possibly in his front belly  
5 band -- excuse me, front belly area, but I don't recall  
6 specifically.

7 Q. Okay. Like a fanny pack type thing?

8 A. I believe so, sir.

9 Q. What else did you find other than that weapon?

10 A. Other than the weapon and the wallet?

11 Q. Yeah. Describe the wallet for us.

12 A. It was just a black leather wallet with IDs --  
13 excuse me, a Texas drivers license and some social security  
14 cards.

15 Q. Did you have any conversation with Mr. Garcia  
16 as you were searching him?

17 A. Yes, I did.

18 Q. Would you tell us about that?

19 A. I removed the wallet from Mr. Garcia and found  
20 a Texas drivers license in the name of Darrin Ojeda and I  
21 took out the license and asked Mr. Garcia what his date of  
22 birth was, trying to get an exact identification of who the  
23 subject was in my custody. And upon asking what his date of  
24 birth was -- excuse me, I first asked him who he was and  
25 Mr. Garcia said, "You know the fuck who I am." And then

1 once I found the wallet, I asked, "Mr. Ojeda, what's your  
2 date of birth?" And he said, "I don't fucking know."

3 Q. How would you describe his demeanor as he was  
4 making these comments to you?

5 A. He was very angry.

6 Q. Did you have any further conversation with  
7 him?

8 A. No, sir, I did not.

9 Q. Special Agent, let me show you two weapons.  
10 First is a Beretta pistol marked for identification as  
11 State's Exhibit 285 and we've looked at these outside the  
12 presence of the jury; is that correct?

13 A. Yes, we have.

14 Q. Is State's 285, the weapon you took from  
15 George Rivas?

16 A. Yes, it is.

17 Q. This is a second weapon, which is a Ruger  
18 marked for identification as State's 284, and ask you to  
19 look at that and see if that's the gun that you took from  
20 Mr. Garcia?

21 A. Yes, it is.

22 Q. Also State 286, could you look at that and see  
23 if that's the wallet that you took off Mr. Garcia?

24 A. Yes, it is.

25 Q. And it still contains the Texas drivers

1 license for Mr. Ojeda?

2 A. Yes, it does.

3 Q. Did you later come to find out that Darrin  
4 Ojeda was one of the Oshman's employees back from Irving,  
5 Texas?

6 A. Yes, I did.

7 MR. WIRSKYE: Your Honor, at this time we  
8 offer State Exhibit 284, 285, and 286.

9 MR. SANCHEZ: We have no objection, Your  
10 Honor.

11 THE COURT: Nos. 284 through 286 shall be  
12 admitted.

13 Q. (By Mr. Wirskye) I'll also show you an  
14 exhibit that was prepared, marked for identification as  
15 State 287. Does this just reflect the two guns from the  
16 individuals who they were recovered from?

17 A. Yes, it does.

18 MR. WIRSKYE: Judge, we would offer  
19 State's 287.

20 MR. SANCHEZ: No objection.

21 THE COURT: No. 287 shall be admitted.

22 Q. (By Mr. Wirskye) Was that the extent of your  
23 involvement with these individuals out at the Western  
24 Convenience Store?

25 A. Yes, sir.

1 Q. What did you do after you left the convenience  
2 store?

3 A. I went back to the Coachlight RV Park.

4 Q. Did you assist in the resolution of that  
5 situation?

6 A. Yes, sir.

7 Q. Finally a day or so later, did you also --  
8 were you called out to Colorado Springs?

9 A. Yes, I was.

10 Q. And that was involving the apprehension of  
11 Newbury and Murphy, those two of the Texas Seven; is that  
12 right?

13 A. Yes, sir.

14 Q. And you assisted in searching a motel room in  
15 Colorado Springs?

16 A. Yes, I did.

17 MR. WIRSKYE: I'll pass the witness, Your  
18 Honor.

19 CROSS-EXAMINATION

20 BY MR. SANCHEZ:

21 Q. Agent, at the convenience store you were able  
22 to observe the takedown of Rivas, Rodriguez, and Garcia; is  
23 that correct?

24 A. Yes, sir.

25 Q. And the whole time you were watching, was

1 there any resistance to that takedown?

2 A. I was in a position far enough removed that I  
3 could not make an assessment of if there was any resistance  
4 regarding --

5 Q. You didn't see anything happen to make you  
6 think that anybody was in danger, that the officers who were  
7 involved in the takedown?

8 A. I apologize, I wasn't close enough to observe  
9 any of those specific actions.

10 MR. SANCHEZ: I pass the witness.

11 MR. WIRSKYE: Nothing further, Your  
12 Honor.

13 THE COURT: Thank you, Special Agent, you  
14 may stand down.

15 MR. WIRSKYE: May this witness be finally  
16 excused?

17 MR. SANCHEZ: We have no objection, Your  
18 Honor.

19 THE COURT: He may.

20 MR. SHOOK: Call Special Agent Mahoney.

21 JAMES MAHONEY,  
22 having been duly sworn, was examined and testified as  
23 follows:

24 DIRECT EXAMINATION

25 BY MR. SHOOK:

1 Q. Could you tell us your name, please.

2 A. James Mahoney.

3 Q. How are you employed, sir?

4 A. Special Agent with the FBI.

5 Q. How long have you been with the FBI?

6 A. Approximately 13 years.

7 Q. And where are you assigned?

8 A. Pueblo, Colorado.

9 Q. Could you tell us what your duties are at that  
10 particular office?

11 A. At that office my duties are to investigate  
12 any federal violations in the southern half of the state of  
13 Colorado and, as an additional duty, I'm a member of the  
14 Evidence Response Team out of Denver.

15 Q. And as a member of the Evidence Response Team,  
16 what are your duties with that team?

17 A. My duties vary, depending on how many people  
18 show up at a crime scene. But basically the Evidence  
19 Response Team is a crime scene investigation unit. We have  
20 16 members and our duties vary as we show up for a crime  
21 scene, depending on who is there and how they are assigned.

22 Q. Do you have any special training for the  
23 duties that you have with the Evidence Response Team?

24 A. I have some advanced crime scene training. I  
25 have 80 hours of the basic crime scene investigation

1 training that the FBI puts on and, in addition, I have some  
2 advanced training in latent fingerprints and other areas.

3 Q. Let me turn your attention to January 22nd of  
4 2001 and ask if your team was notified to assemble at a  
5 location in Colorado?

6 A. Yes, we were.

7 Q. What site were you told to come to?

8 A. Well, we initially met in Colorado Springs and  
9 then as soon as the crime scene up in Woodland Park was  
10 secured, we reported up there.

11 Q. And was your assignment that day to assist in  
12 the search of an RV that was located in the Coachlight RV  
13 Park?

14 A. Yes, it was.

15 Q. Now, on a particular search you may have a  
16 different duty or a specific role; is that right?

17 A. That's correct.

18 Q. In this particular case what was your role?

19 A. I was the evidence collection custodian,  
20 making sure that all the evidence was collected properly and  
21 taking it into custody.

22 Q. Okay. When you -- when your team searches an  
23 area such as the RV, what is the procedure as far as  
24 collection of evidence goes?

25 A. We -- first we locate evidence. We search for



1 it, locate it, we photograph it in place, we collect it, we  
2 bag it, we mark the bag, and we mark an evidence log the  
3 location where we found it.

4 Q. And you are the one person who is in charge of  
5 keeping a log and taking control or custody of the evidence?

6 A. Yes, sir.

7 Q. All right. And that's what you did that day  
8 or that evening and into the early morning hours of the 22nd  
9 of January, 2001?

10 A. Yes, it is.

11 MR. SHOOK: At this time I want to offer  
12 State Exhibits 981, 982, 983, and 984 for record purposes.

13 MR. SANCHEZ: No objection just for  
14 record purposes.

15 THE COURT: Nos. 981 through 984 for  
16 record only. Once again, members of the jury, that means  
17 that you would not be able to view those exhibits.

18 Q. (By Mr. Shook) Before evidence is collected  
19 it's your procedure to photograph the evidence where it's  
20 found in place; is that correct?

21 A. Yes, sir, it is.

22 Q. Were a number of photographs then made of the  
23 outside of the RV, as well as the interior of the RV?

24 A. Yes.

25 Q. You have seen these photographs outside the

1 presence of the jury; is that correct?

2 A. That's correct.

3 Q. First of all, let me show you State's Exhibit  
4 364. Does that show a photograph of the RV and a diagram of  
5 it?

6 A. Yes, it does.

7 Q. And State Exhibit 364-A, is that a photograph  
8 of a Jeep that you also participated in the search of?

9 A. Yes, it is.

10 Q. And 365-A is also a photograph of the Jeep?

11 A. Yes.

12 Q. And then 365 is a photograph of the RV itself?

13 A. Yes, it is.

14 Q. Then State Exhibit 366 through State Exhibit  
15 464, are those all photographs of the RV, as well as the  
16 search of the Jeep and the items taken from the Jeep  
17 Cherokee?

18 A. Yes, they are.

19 MR. SHOOK: Your Honor, at this time we  
20 offer those exhibits.

21 MR. SANCHEZ: No objection, Your Honor.

22 THE COURT: State Exhibits 364, 364-A,  
23 and 365 and 365-A and 366 through 464 shall be admitted.

24 Q. (By Mr. Shook) Let me show you 365 first.  
25 There's a laser up there that you can use whenever you feel

1 it's necessary to point out items to the jury.

2 Is this a photograph of how the RV  
3 appeared just prior to your search?

4 A. Yes, it is.

5 Q. Was there any damage done to the outside of  
6 the RV?

7 A. Just looking at it from this picture, you can  
8 see the window has been blown out here and the front door  
9 was damaged.

10 Q. Okay. Let me show you State Exhibit 364.  
11 Does this show the RV and kind of an overview diagram of how  
12 the RV was laid out?

13 A. Yes, it does.

14 Q. Can you explain the diagram to the jury,  
15 please?

16 A. Okay. This is the front door on the side of  
17 the RV. You walk in. The driving console, driver's seat  
18 here, passenger's seat here. Console in the middle. Right  
19 straight across is a sofa. This area right here is the  
20 dinette. You have two bench seats and a dining room table.  
21 The galley or kitchen area right here. Sink, stove,  
22 refrigerator.

23 This is a storage closet where we located  
24 some items of evidence. This is a bathroom straight across  
25 the hallway from it. The toilet, tub, sink, and the

1 counter. And then back in this back area is the master  
2 bedroom. You have two bunks back here with a table in  
3 between.

4 Q. Okay. State Exhibit 366, does that show the  
5 window that would be consistent with being damaged if a tear  
6 gas grenade is lobbed into the vehicle?

7 A. Yes, it is.

8 Q. No. 367, does that show the other side of the  
9 RV?

10 A. Yes, it does.

11 Q. No. 368, what do we see there?

12 A. That's looking at the RV from the front.

13 Q. Did it have curtains that could be pulled  
14 forward to block out the sun and for more privacy?

15 A. Yes.

16 Q. And State Exhibit 369?

17 A. The rear of the RV.

18 Q. Now, does 370 show us the entry or how the RV  
19 looks once you open the front door?

20 A. Yes.

21 Q. And State Exhibit 371, what do we see there?

22 A. That's a trash can located right outside the  
23 RV towards the front.

24 Q. Was that also searched and some items removed?

25 A. Yes, it was.

1 Q. Let me show you State Exhibit 372. What do we  
2 see in this photograph?

3 A. Okay. This is a view if you just step inside  
4 the RV and turn to the right. This is the driver's console  
5 here. Passenger's seat right here. You have got some  
6 sleeping bags piled up, blankets, sleeping bags,  
7 entertainment console here, TV, DVD player, VCR. You have  
8 tapes and movies up in this area here.

9 Q. State Exhibit 373?

10 A. Okay. This is the sofa just across from the  
11 front door. Again you are looking up towards the driver's  
12 console here.

13 Q. And State Exhibit 374?

14 A. This is stepping into the RV, turning to the  
15 left, kitchenette here, kitchen here, back bedroom, and this  
16 was the body of Larry Harper.

17 Q. Okay. The body was lying there near the  
18 bathroom kind of in the hallway?

19 A. Yes.

20 Q. State Exhibit 375, is that a closer view of  
21 the body?

22 A. Yes, it is.

23 Q. What is that securing his hands?

24 A. It's a tie. They are basically plastic  
25 handcuffs.

1 Q. Okay. Are they placed -- is it standard  
2 procedure that once entry is made into an area like this  
3 that a body be secured like that, if they're suspected of  
4 having a weapon?

5 A. Yes.

6 Q. And then I see something on his shoulders.  
7 What type of apparatus is that?

8 A. That was a gun harness.

9 Q. Okay. State Exhibit 376, does this show the  
10 body in relation to the bathroom?

11 A. Yes. You can see the bathroom right to the  
12 left here.

13 Q. Is that a Bible that's open on the toilet?

14 A. Yes, right up here.

15 Q. State Exhibit 377, do you see an item in  
16 Mr. Harper's pocket?

17 A. Right there. It's a magazine clip for a  
18 semiautomatic pistol.

19 Q. Okay. There were a number of weapons that  
20 were taken into custody; is that correct?

21 A. Yes, sir.

22 Q. Let me show you State Exhibit 379. Is that  
23 one of the handguns that was taken into custody?

24 A. Yes, it is.

25 Q. I believe what we see on the photograph is

1 State Exhibit 288-A; is that correct?

2 A. Yes, it is.

3 Q. There's some other weapons here in front of  
4 you which have been marked State Exhibits 289 through 300.  
5 Are those other handguns that were recovered from the RV?

6 A. Yes, they are.

7 MR. SHOOK: Your Honor, at this time we  
8 will offer State Exhibit 288-A, along with 289 through 300.

9 MR. SANCHEZ: No objection.

10 THE COURT: No. 288-A, along with 289  
11 through 300 shall be admitted.

12 Q. (By Mr. Shook) Special Agent Mahoney, as we  
13 go through the weapons that you recovered, if you would make  
14 note of -- say the exhibit number of that particular weapon  
15 we may see on the photograph and identify it by the State's  
16 exhibit marker.

17 A. Okay.

18 Q. This is 288-A, is that correct, that we see?

19 A. Yes, it is.

20 Q. And what do we see in that particular  
21 photograph?

22 A. That is somebody unloading this weapon.

23 Q. Okay. So the condition it was found, was it  
24 fully loaded with a round in the chamber?

25 A. Yes, it was.

1 Q. Let me show you State Exhibit 381. Is that  
2 that dinette table you talked about?

3 A. Yes, it is.

4 Q. And is that the gun we see there on the bench?

5 A. Yes, it is.

6 Q. There's another weapon, I believe, on the  
7 table that we can see in State Exhibit 382. Is that located  
8 there in front of you?

9 A. That would be State Exhibit 289.

10 Q. Okay. And what type of weapon was that?

11 A. Heckler & Koch .45 caliber semiautomatic  
12 pistol.

13 Q. Did your notes reflect whether it was loaded  
14 or unloaded?

15 A. This was fully loaded with a round in the  
16 chamber.

17 Q. Okay. Next moving to the bathroom, let me  
18 show you State Exhibit 383. Is that looking at the bathroom  
19 counter, does that show another handgun?

20 A. Yes, it does.

21 Q. And was that taken into custody?

22 A. Yes.

23 Q. Which State exhibit is that?

24 A. That would be State Exhibit 290. It's a --  
25 Bursa is the brand and .380 is the caliber.



1 Q. Okay. Let me show you 384. Is that that  
2 particular weapon after the clip has been taken out?

3 A. Yes, it is.

4 Q. Was it -- do your notes reflect if it was  
5 fully loaded?

6 A. My notes state that it had a full magazine,  
7 but there was not any round in the chamber.

8 Q. Okay. Let me show you State Exhibit 385.  
9 What's that a photograph of?

10 A. That was some hair dye found on top of the  
11 bathroom vanity.

12 Q. Okay. Then State Exhibit 387, what do we see  
13 in that photograph?

14 A. That's looking into the rear bedroom of the  
15 RV.

16 Q. There's two beds in the back of the rear  
17 bedroom?

18 A. Yes.

19 Q. And did you find some items back in that  
20 location?

21 A. We did.

22 Q. State Exhibit 388, does that reflect part of  
23 where you found the shotgun in that area?

24 A. Yes, it is. It's the edge of the bed to the  
25 right, right along the wall of the RV and you see the handle

1 of a shotgun sticking out right there.

2 Q. State Exhibit 389 shows the shotgun after it's  
3 been removed from that space?

4 A. Yes, it does.

5 Q. Okay. And then State Exhibit 390, what do we  
6 see in that photo?

7 A. That's showing the shotgun after it's been  
8 unloaded. It shows that there were six chambered rounds.

9 Q. Okay. Let me show you what has been marked  
10 State Exhibit 319. Is this the shotgun that we see in the  
11 photograph?

12 A. Yes, it is.

13 Q. It was the one that was taken into custody?

14 A. Yes.

15 MR. SHOOK: We'll offer State Exhibit  
16 319.

17 MR. SANCHEZ: No objection.

18 THE COURT: No. 319 is admitted.

19 Q. (By Mr. Shook) Let me show you State Exhibit  
20 391. Does that show a bag that's on top of the bed there?

21 A. Yes, it does. It's a black bag right there.

22 Q. And inside of the bag during the search were  
23 some weapons found?

24 A. Yes.

25 Q. Let me show you State Exhibit 393. What do we

1 see there?

2 A. It's looking inside the black bag. I'm having  
3 a hard time seeing the weapon in this picture, but I think  
4 that's what we're trying to show there.

5 Q. Would 394 be one of the handguns that was  
6 taken out?

7 A. Yes, it would be.

8 Q. And where is that reflected in the exhibits  
9 before you?

10 A. That would be State Exhibit 291.

11 Q. Okay.

12 A. Smith & Wesson .357 Magnum.

13 Q. State Exhibit 395 shows the Smith & Wesson  
14 after it's been unloaded?

15 A. Yes, it does.

16 Q. So it was fully loaded when it was recovered?

17 A. Yes, sir.

18 Q. And let me show you State Exhibit 396. Does  
19 that show another handgun that was recovered?

20 A. Yes, it does. That would be this handgun  
21 here, State Exhibit 292. It's a Walther PBK .32 caliber  
22 semiautomatic pistol.

23 Q. Was it loaded at the time it was found?

24 A. It was loaded with a round in the chamber.

25 Q. Okay. And State Exhibit 397, do we see

1 another handgun?

2 A. Yes, we do.

3 Q. And what type of handgun is that?

4 A. That is this State Exhibit 293. It's a North  
5 American Arms .22 caliber Derringer.

6 Q. And was it loaded at the time it was found?

7 A. It was fully loaded with five rounds.

8 Q. And State Exhibit 398, what part of the RV is  
9 that?

10 A. Directly opposite of the bathroom was a  
11 cabinet and that's what you are looking at there.

12 Q. And were there some handguns and long guns  
13 located in that cabinet?

14 A. Yes, there were.

15 Q. Looking first at the bottom of the cabinet,  
16 let's show you State Exhibit 399. Are those four handguns  
17 that were taken into evidence?

18 A. Yes, they are.

19 Q. If you could show those to the jury with the  
20 exhibit numbers.

21 A. Okay. The first one, State Exhibit 294, this  
22 is a Ruger .22 caliber pistol or revolver. State Exhibit  
23 295, Smith & Wesson .357.

24 Q. Do your notes indicate if those were loaded or  
25 unloaded?

1 A. Neither one of those were loaded.

2 Q. All right. State Exhibit 296?

3 A. Smith & Wesson .22 caliber pistol. This also  
4 was not loaded.

5 Q. And State Exhibit 297?

6 A. It's a Browning .22 caliber pistol and my  
7 notes do not indicate whether this was loaded. I don't  
8 believe it was.

9 Q. Okay. State Exhibit 400, what do we see  
10 there?

11 A. Those are some long guns that were found at  
12 the rear of that same cabinet behind some clothing.

13 Q. Okay. Does 401 show the guns as they appeared  
14 after the clothing has been removed?

15 A. Yes.

16 Q. And were those taken into custody?

17 A. Yes, they were.

18 Q. Let me show you some guns that they appear to  
19 be the ones that you recovered from that closet. I believe  
20 they start at State Exhibit 311 and go to 317. Do these  
21 appear to be the same rifles and shotguns that you removed  
22 and took into custody?

23 A. Yes, they do.

24 Q. If you would, let's go over these one at a  
25 time and tell us if they were loaded or unloaded at the time

1 they were taken into custody.

2 THE COURT: Are you going to offer those?

3 MR. SHOOK: Yes, sir. We'll offer them  
4 at this time.

5 MR. SANCHEZ: We have no objection.

6 THE COURT: Nos. 311 through 317 shall be  
7 admitted.

8 A. Okay. First Exhibit 311, Browning Gold Hunter  
9 shotgun, there was no ammunition with this at the time I  
10 found it.

11 Q. (By Mr. Shook) Okay.

12 A. The second one is State Exhibit 318.

13 Q. Is 318 another one of the rifles that you took  
14 into custody?

15 A. Yes, it is.

16 MR. SHOOK: We'll offer 318 at this time.

17 MR. SANCHEZ: No objection.

18 THE COURT: No. 318 shall be admitted.

19 A. This is a Ruger .22 caliber rifle. It's -- my  
20 notes state that there was a clip that contained ammunition  
21 for this one.

22 Q. (By Mr. Shook) Okay.

23 A. State Exhibit 313, a Remington shotgun, no  
24 ammunition with that one.

25 Q. All right.

1 A. State Exhibit 314, Winchester .22 caliber  
2 rifle, 12 rounds were chambered in this weapon.

3 Q. Twelve rounds were chambered in that one?

4 A. Yes. State Exhibit 315 is a Winchester  
5 shotgun. I don't have any indication that this was loaded  
6 at the time we found it; however, it was altered.

7 Q. How was it altered?

8 A. The barrel has been sawed off at the end.

9 Q. Okay.

10 A. State Exhibit 316, a Remington, it's a Magnum  
11 shotgun. Does not indicate that it was loaded; however,  
12 this one also has had the barrel sawed off.

13 Q. All right.

14 A. State Exhibit 317, a Colt 223 rifle, was not  
15 loaded at the time we found it.

16 Q. And State Exhibit 312?

17 A. A Remington model 97, was not loaded at the  
18 time we found it.

19 Q. Okay. Now, for the AR-15, did you find a clip  
20 that would fit that weapon also in that closet or in a  
21 drawer?

22 A. It was in a drawer below the closet.

23 Q. Two of the shotguns had been altered because  
24 the barrels had been sawed off?

25 A. Yes, sir.

1 Q. Let me show you State Exhibit 402. Does that  
2 show two shotgun barrels that you found in the RV?

3 A. Yes, it is.

4 Q. And State Exhibit 403?

5 A. That's inside the closet showing some  
6 ammunition that we found.

7 Q. Okay. And State Exhibit 404?

8 A. One of the drawers below the closet that shows  
9 additional ammunition as well as the clip to the AR-15.

10 Q. Okay. State Exhibit 405?

11 A. That was a second drawer underneath the gun  
12 cabinet with another pistol.

13 Q. And is that gun located in the tray in front  
14 of you?

15 A. Yes, it is. State Exhibit 298, it's a Bursa  
16 .380 pistol.

17 Q. And did it appear to be loaded?

18 A. In the photograph there it shows that there is  
19 a magazine in the magazine chamber. I don't have it in my  
20 notes whether it was loaded or not.

21 Q. Let me show you the next photograph. Does  
22 that show the weapon after the clip has been taken out?

23 A. Yes, it does. And it shows that there was a  
24 round in the chamber which was removed and then a loaded  
25 clip right here.



1 Q. Let me show you State Exhibit 407. Does that  
2 show another handgun that was taken into custody?

3 A. Yes, it does.

4 Q. And is that there on the tray?

5 A. That would be State Exhibit 299. It's a  
6 Beretta, nine millimeter pistol. This was not loaded at the  
7 time.

8 Q. State Exhibit 408, we're looking at the front  
9 of the RV again. There was a pack located in the chair.  
10 Was the pack searched?

11 A. Yes, it was.

12 Q. State Exhibit 410 shows the pack after it's  
13 been opened?

14 A. Yes, it does.

15 Q. First let me show you State Exhibit 413. Does  
16 that show a gun that was located in the pack?

17 A. Yes. You can see the gun right here.

18 Q. Okay. And is that weapon there in the tray  
19 before you?

20 A. That's State Exhibit 300. It's a Browning .22  
21 caliber pistol.

22 Q. And was it loaded at the time?

23 A. It was fully loaded with one round in the  
24 chamber.

25 Q. Now, you found cash in several places in the

1 RV, also; is that right?

2 A. Yes, we did.

3 Q. Let me show you in that particular pack, the  
4 blue pack there, State Exhibit 411 and 412, are those  
5 photographs of cash that was located?

6 A. Yes, it is.

7 Q. What was the amount of cash found in that blue  
8 pack?

9 A. In the silver container which you are looking  
10 at right there, there was \$4,672. I'm showing another \$188  
11 that was located inside that backpack, also.

12 Q. Let me show you State Exhibit 41 -- let me  
13 stop there. Was there cash found additionally in the RV?

14 A. Yes, there was. Back in the rear bedroom in a  
15 black bag that we had located some weapons in, I believe, we  
16 found 55 -- \$5,510 in one location and \$361 in another  
17 location, and \$900 in another location.

18 Q. Now, looking at this photograph, what do we  
19 see there?

20 A. There's a Radio Shack emergency frequency  
21 guide. The purpose of that is to program scanners.

22 Q. Okay. That would contain frequency guides in  
23 particular cities and different states?

24 A. Yes.

25 Q. Let me show you what has been marked as State

1 Exhibit 341-A. Is this, in fact, the Radio Shack police  
2 call frequency guide that we see in the photograph?

3 A. Yes, it is.

4 MR. SHOOK: We'll offer 341-A.

5 MR. SANCHEZ: We have no objection.

6 THE COURT: No. 341-A shall be admitted.

7 Q. (By Mr. Shook) Looking on page 194, were  
8 there some blue markings there that had been placed there by  
9 a pen?

10 A. Yes, sir.

11 Q. And where were they placed?

12 A. They are placed marking the frequency guides  
13 for the City of Irving, Texas.

14 MR. SHOOK: Your Honor, could I have the  
15 Court's permission to pass some of this evidence down the  
16 jury box?

17 THE COURT: Yes, sir.

18 Q. (By Mr. Shook) Let me show you State Exhibit  
19 415. What do we see in that photograph?

20 A. It's another one of the drawers below the gun  
21 cabinet. That's showing a bandolier containing rounds of  
22 shotgun ammunition.

23 Q. Okay. What types of rounds of shotgun  
24 ammunition were contained in it?

25 A. There's two different types shown in this

1 picture here. The red are double aught buck, which is a  
2 series of steel pellets that are scattered when the shotgun  
3 is shot. The other one, the green ones, are called slugs.  
4 It's a single lead projectile that comes out of the shotgun.

5 Q. Let me show you what has been marked as State  
6 Exhibit 346. Is this, in fact, the bandolier that we see in  
7 the photograph?

8 A. Yes, it is.

9 MR. SHOOK: We'll offer 346 for all  
10 purposes.

11 MR. SANCHEZ: No objection.

12 THE COURT: No. 346 shall be admitted.

13 Q. (By Mr. Shook) Agent Mahoney, the slug-type  
14 ammunition, what is that used for?

15 A. Well, it's more like a rifle bullet. In law  
16 enforcement it's a heavy takedown ammunition.

17 Q. State Exhibit 416, does that show some damage  
18 caused by a bullet?

19 A. Yes, it does.

20 Q. What type of -- is it believed that Mr. Harper  
21 suffered a couple of self-inflicted gunshot wounds?

22 A. Yes, it is.

23 Q. State Exhibit 419, does that show one of the  
24 shell casings that was recovered?

25 A. Yes, it does.

1 Q. And then State Exhibit 420 shows another one  
2 of the casings?

3 A. Yes, it does. This one was located just  
4 inside the bathroom.

5 Q. And 424, do we see -- or did you find various  
6 two-way radios and things like that throughout the RV?

7 A. We did.

8 Q. And is that reflected there in the photograph?

9 A. Yes, I believe it is.

10 Q. No. 423, is that a closer view of some of the  
11 video films that were above the home entertainment center?

12 A. Yes.

13 Q. And then 425, what does that reflect?

14 A. It was a Pachmayr. It's a grip, stick-on  
15 grip, that you can add to a weapon or tool.

16 Q. Okay. I want to show you a few more items  
17 that were taken from the RV. First of all, let me show you  
18 State Exhibits 335 and 337, 338, 339, 341, 341-B, 342, and  
19 347. Are those items all taken from the RV?

20 A. They are.

21 MR. SHOOK: We'll offer those exhibits at  
22 this time.

23 MR. SANCHEZ: No objection, Your Honor.

24 THE COURT: State Exhibits 335, 337, 338,  
25 339, 341, 341-B, 342, and 347 shall be admitted.

1 Q. (By Mr. Shook) You said there were a lot of  
2 two-way radios laying around?

3 A. Yes, sir.

4 Q. No. 335, is that one of the two-way radios you  
5 recovered from the dashboard?

6 A. Yes, it is.

7 Q. And what do we see in State Exhibit 337?

8 A. This contains a Radio Shack emergency radio  
9 frequency scanner with headphones and stopwatch and antenna.

10 Q. And does that indicate that that was found  
11 inside the RV?

12 A. Yes, it does.

13 Q. Okay. Is this the type of scanner that we see  
14 the frequency book that you can program scanners in and  
15 listen to police calls and that sort of thing?

16 A. Yes, it is.

17 Q. All right. State Exhibit 338 --

18 A. Is another scanner.

19 Q. Okay. Same type of scanner as the other one?

20 A. Yes.

21 Q. Now, State Exhibit 341, what is that?

22 A. It's a smoke grenade with a cigarette lighter  
23 attached to it.

24 Q. Okay. And where was that found?

25 A. It was inside one of the black bags in the RV.

1 Q. Okay. And then State Exhibit 342, what is  
2 that?

3 A. This is a security baseball style hat found in  
4 the black bag in the RV.

5 Q. Also found in the black bag?

6 A. Yes.

7 Q. All right. And then let me show you State  
8 Exhibit 615. Is this an item also found inside the RV?

9 A. Yes, it is.

10 MR. SHOOK: We'll offer State Exhibit 615  
11 for record purposes.

12 MR. SANCHEZ: No objection.

13 THE COURT: No. 615 is for record only.  
14 Once again, the jury will not be able to view that evidence.

15 Q. (By Mr. Shook) Now, you also searched the  
16 gray Jeep Cherokee that was taken to the Teller County  
17 Sheriff's Office; is that right?

18 A. Yes.

19 Q. First, let me show you State Exhibit 364-A.  
20 Is this how the Cherokee appeared before you began searching  
21 it?

22 A. Yes, it is.

23 Q. And were there some items in a garbage bag  
24 there on top of the hood?

25 A. Yes, there were.

1 Q. Were there some weapons found in the Jeep?

2 A. Yes.

3 Q. Let me show you some exhibits which have been  
4 marked State Exhibits 301 through 310. Are these handguns  
5 that were all recovered in different compartments from the  
6 Jeep?

7 A. Yes, they are.

8 MR. SHOOK: Your Honor, at this time we  
9 would offer State Exhibits 301 through 310.

10 MR. SANCHEZ: No objection.

11 THE COURT: State Exhibits 301 through  
12 310 shall be admitted.

13 Q. (By Mr. Shook) Okay. State Exhibit 428, is  
14 that a weapon that was recovered, actually, from the garbage  
15 bag?

16 A. Yes, it is.

17 Q. And is that reflected there in the tray?

18 A. That's State Exhibit 301. It's a Beretta  
19 Tomcat.

20 Q. At the time it was taken into custody, was it  
21 loaded?

22 A. My notes don't indicate. I believe -- I'm not  
23 quite sure looking at the picture, either.

24 Q. Does that appear to be a clip, some type of  
25 clip above it?



1           A.       Okay. From what I can see from the picture,  
2 this is the clip that was removed from it and I believe this  
3 is a round that would have been removed from the chamber.

4           Q.       And then 429?

5           A.       Okay. It's a weapon, State Exhibit 302, Smith  
6 & Wesson Chief Special. And this was in that plastic bag on  
7 the hood of the Jeep. My notes don't indicate the condition  
8 of it at the time.

9           Q.       Okay. Let me show you State Exhibit 430.  
10 Does that show some additional property that was found in  
11 the bag?

12          A.       Yes, it does.

13          Q.       And do we see kind of a badge with an ID  
14 there?

15          A.       Yes, we do.

16          Q.       Let me show you State Exhibit 433. What do we  
17 see in that photograph?

18          A.       I'm not certain.

19          Q.       Does that appear to be some type of scanner or  
20 -- and down at the bottom one of the handguns that was  
21 seized? I don't know if you can see it.

22          A.       I can't see it real clearly up here to be able  
23 to tell you for sure.

24          Q.       Okay. Let me show you 436. There's some bags  
25 located in the back. Were these also searched and guns

1 retrieved from them?

2 A. Yes, they were.

3 Q. No. 438, does that show one of the bags as it  
4 was opened?

5 A. Yes, it does.

6 Q. We see some cash there. Was cash recovered  
7 from the -- from different packs or bags in the Jeep?

8 A. Yes, there was.

9 Q. How much money was recovered from the Jeep?

10 A. Okay. There was a wallet on the hood of the  
11 Jeep with \$29 and an additional \$2.37 in that bag. There  
12 was a black fanny pack on the driver's side floor with  
13 \$150.82 in it. There was a black bag in the rear passenger  
14 compartment. It had \$5,200 in it. There was a blue  
15 backpack which may be the one we're looking at here,  
16 contained \$5,670. And that's all the cash that I recorded.

17 Q. State Exhibit 439, does that show some -- a  
18 weapon that was recovered from the bag as it appeared when  
19 you first opened the bag?

20 A. Yes, it does.

21 Q. What type of -- which weapon was that?

22 A. I believe that was State Exhibit 303. It's a  
23 Ruger. I'm not quite sure of the caliber. Looks like a  
24 nine millimeter.

25 Q. State Exhibit 440?

1 A. The same weapon, I believe.

2 Q. Okay.

3 A. My notes don't indicate the condition of that  
4 one at the time.

5 Q. What was the next gun that was recovered?

6 A. State Exhibit 304, it's a Charter Arms .38  
7 Special revolver.

8 Q. That's what we see in 441?

9 A. Yes.

10 Q. Was that --

11 A. This weapon was loaded.

12 Q. Okay. What's the next weapon that you  
13 recovered?

14 A. State Exhibit 305 it's a Berreta nine  
15 millimeter pistol. The pistol was loaded with one round  
16 chambered.

17 Q. I want to show you one other gun that wasn't  
18 in that tray, which has been marked as State Exhibit 309.

19 A. Yes.

20 Q. Is that another one of the guns that was taken  
21 into custody?

22 A. It is.

23 Q. We may have offered, but I don't think that I  
24 offered that last one. At this time I will offer State  
25 Exhibit 309 for all purposes.

1 MR. SANCHEZ: We have no objection.

2 THE COURT: No. 309 has been previously  
3 admitted.

4 Q. (By Mr. Shook) Okay. No. 305, was that found  
5 in the bag, also?

6 A. It was in a blue and black Northface backpack.  
7 This was next.

8 Q. All right. State Exhibit 306, where was that  
9 found?

10 A. This was found in a green Pro Source bag  
11 behind the passenger's seat.

12 Q. Okay. Is that the gun after it was taken out?

13 A. Yes, it is.

14 Q. Did it appear to be loaded?

15 A. Yes, it does.

16 Q. Okay. The next handgun you took into custody?

17 A. It would be State Exhibit 307. It's a Beretta  
18 .22 caliber pistol.

19 Q. The next photograph shows it after the clip  
20 has been taken out?

21 A. Yes. It shows that it was fully loaded with a  
22 round chambered.

23 Q. And then the next exhibit?

24 A. The next one is Exhibit 308. It's a Beretta  
25 nine millimeter pistol.

1 Q. And was it loaded or unloaded?

2 A. My notes don't indicate. I see a magazine  
3 with it in that photograph there.

4 Q. Okay. And then the next handgun?

5 A. State Exhibit 310.

6 Q. Where was that found?

7 A. This was also found in a green Pro Source bag  
8 behind the passenger's seat.

9 Q. And State Exhibit 309, do you recall where  
10 that was found?

11 A. This was also found in that same green bag  
12 behind the passenger's seat.

13 Q. And was it loaded?

14 A. I don't have that in my notes.

15 Q. Okay. Let me show you what has been marked as  
16 State Exhibit 62. Is that type of weapon, I believe you  
17 have seen that gun outside the presence of the jury on a  
18 previous occasion, does it match the information that we see  
19 on State Exhibit 62?

20 A. Yes, Glock Model 17, Serial No. CWU717.

21 Q. I want to show you some more exhibit items  
22 that you seized from the Jeep itself. I want to show you  
23 what has been marked as 348, 349, 350, 351, 352, 353, 354,  
24 355, 356, 358, and 483. Are those all items that you took  
25 from the Jeep?

1 A. Yes, they are.

2 MR. SHOOK: At this time we offer those  
3 exhibits.

4 THE COURT: We'll stand in recess until  
5 3:20.

6 (Recess)

7 [Jury out]

8 Q. (By Mr. Shook) Special Agent Mahoney, 342-A  
9 and 344-A, were these items found in the RV?

10 A. Yes.

11 Q. And 342-A actually found in the trash can we  
12 saw in the photograph?

13 A. Yes.

14 Q. And 344-A was actually found in the RV itself?

15 A. Yes.

16 Q. All right.

17 MR. SHOOK: Those would be the items that  
18 we would offer, along with, for all purposes, 615.

19 MS. BUSBEE: Could we see them?

20 MR. SANCHEZ: Your Honor, we would object  
21 to these exhibits. They haven't been linked to Mr. Murphy  
22 at all. We also think that they are irrelevant to this  
23 proceeding. And if you think they are relevant, I think  
24 under 403 balancing that they shouldn't come in on  
25 guilt/innocence, Your Honor.

1 THE COURT: Let me see the -- I know the  
2 "Spec War" is not coming in.

3 MS. SMITH: May I speak to that before  
4 you make your ruling?

5 THE COURT: Yes, you may.

6 MS. SMITH: Unlike other trials, in this  
7 case the issue is parties. Therefore its value in this case  
8 is more so than it was in the other ones, because the intent  
9 of the mental state of the parties to the crime is very  
10 important and the "Spec War" sheet goes to -- regardless of  
11 who brought it in, it could be any of the parties, it goes  
12 to their mental state and reflects on the intent. And  
13 intent is going to be an issue -- is the issue in this case  
14 and intent of the parties is an issue.

15 MS. BUSBEE: Your Honor, I don't know how  
16 anything that was found a month after the offense which is  
17 on trial here could possibly be said to be linked to the  
18 defendant's mental state when it hasn't been linked to him.

19 MS. SMITH: It's not just the defendant's  
20 mental state that we're trying to prove here. We're trying  
21 to prove the mental state of the other members of the Texas  
22 Seven. Mr. Bode did state this morning that Mr. Murphy was  
23 in the RV where one of the "Spec War" sheets was located, so  
24 we have linked it.

25 MS. BUSBEE: On a date uncertain.

1 THE COURT: Help me with the dates of the  
2 arrest of the folks in the RV.

3 MS. SMITH: The 22nd.

4 MR. SHOOK: The 22nd.

5 MS. SMITH: And the two were arrested  
6 elsewhere on the 24th.

7 MS. BUSBEE: And I think that the  
8 evidence has shown in previous trials that they had been in  
9 Colorado Springs for several days before they were arrested.

10 MS. SMITH: We don't have to link it to  
11 Mr. Murphy. It certainly wasn't brought into the RV by  
12 anybody but one of the members of the Texas Seven.

13 MS. BUSBEE: I don't know how you can  
14 even say that.

15 MR. SHOOK: There's no evidence that  
16 people were running around, you know, in and out of there.

17 MS. BUSBEE: Or the other. It's just  
18 irrelevant.

19 THE COURT: I understand the State's  
20 theory. You know, previous rule that these exhibits are not  
21 admissible before the jury. As far as 615, which is the  
22 receipt for four bulletproof vests, that will go to the  
23 weight that the jury may assign, if any, they wish to do so.

24 MS. BUSBEE: May I see that, Your Honor?

25 THE COURT: Yes. That's why I was



1 asking. The date on that receipt shows to be the 18th of  
2 January, 2001, and those are certainly large enough that one  
3 would be aware of the bulletproof vest and especially four  
4 vests, if they were there.

5 The question for the jury, that's why I'm  
6 going to admit it, is the weight they wish to assign that,  
7 if he was there and had purchased the vests.

8 MS. BUSBEE: On guilt or innocence?

9 THE COURT: Once again, it just goes to  
10 weight.

11 MS. BUSBEE: So it's your ruling that  
12 this is relevant on the issue of guilt or innocence?

13 THE COURT: I assume that's what the  
14 State is offering it for. I don't know what they are  
15 offering it for.

16 MS. BUSBEE: But my objection is  
17 relevance. So if you are admitting it, you are saying it's  
18 relevant?

19 THE COURT: I understand why they want to  
20 offer the "Spec War" sheet. What's the issue the State is  
21 offering the receipt for?

22 MS. SMITH: It also goes to show the  
23 mental state of the parties, their intent. Why are they  
24 buying ballistic vests?

25 MS. BUSBEE: A month before?

1 THE COURT: A month after.

2 MS. BUSBEE: That's what I'm saying,  
3 their intent that weeks ago what they would do weeks ago is  
4 reflected by something they did three or four weeks later,  
5 three weeks later?

6 MR. SHOOK: It all goes to entering into  
7 a conspiracy with these individuals in anticipation of  
8 violence. You go in to commit robberies and continue to  
9 associate with people that have guns and ballistic vests, it  
10 all goes to the intent of the crime and what you anticipate.

11 MS. SMITH: To do whatever they have to  
12 do to stay free.

13 MS. BUSBEE: Conspiracy has concluded.  
14 We're in guilt or innocence. It's my argument this is not  
15 relevant.

16 MS. SMITH: Conspiracy hasn't concluded.  
17 They're in flight from the offense.

18 THE COURT: Let me understand all the  
19 evidence. Agent, you never did find these four vests  
20 anywhere in Colorado, did you?

21 THE WITNESS: No.

22 MR. SHOOK: Judge, I can tell you for the  
23 record is they were not -- they got arrested before they  
24 were picked up.

25 THE COURT: Delivered. That does change

1 it somewhat in that the defendant may not have had knowledge  
2 that the order was placed, which goes to the relevancy at  
3 this point. Their argument, after understanding all the  
4 evidence here, would be more on the issue of punishment than  
5 it does on the issue of guilt.

6 I'll sustain the objection to 342-A and  
7 344-A for all purposes at this time. And 3 -- what's that  
8 exhibit there?

9 MR. WIRSKYE: No. 615, Your Honor.

10 THE COURT: No. 615, I'll sustain it for  
11 this phase of the trial.

12 MR. SHOOK: While we're outside the  
13 presence of the jury, may I put some other items in for  
14 record purposes?

15 THE COURT: You may.

16 Q. (By Mr. Shook) Special Agent Mahoney, let me  
17 show you some other items that were taken from the RV and  
18 see if you can identify them, 334, 336, 339, 338, 343-A,  
19 344, 345, are all those items taken from the RV?

20 A. Yes.

21 MR. SHOOK: We would offer those for  
22 record purposes.

23 THE COURT: Any objection for record  
24 only?

25 MS. BUSBEE: No, Your Honor.

1 THE COURT: Those items shall be admitted  
2 for record purposes.

3 Q. (By Mr. Shook) State Exhibits 985 and 986,  
4 were these wallets also recovered from the RV?

5 A. They were.

6 MR. SHOOK: We'll offer 985 and 986 for  
7 record purposes, also.

8 MR. SANCHEZ: No objection.

9 THE COURT: Nos. 985 and 986 for record  
10 only.

11 [Jury in]

12 THE COURT: Thank you. You may be  
13 seated. Mr. Shook?

14 MR. SHOOK: I believe we left off on  
15 submitting evidence.

16 THE COURT: Yes. Any objection by the  
17 defense to the box?

18 MS. BUSBEE: No objection to those.

19 THE COURT: State Exhibits 348 through  
20 356, 358 and 483 shall be admitted.

21 Q. (By Mr. Shook) I'll show you State Exhibit  
22 468. Is that the identification that we saw on the front of  
23 the Jeep in an earlier photograph?

24 A. Yes, it is.

25 MR. SHOOK: We'll offer 468, also.

1 MR. SANCHEZ: No objection, Your Honor.

2 THE COURT: No. 468 is admitted.

3 Q. (By Mr. Shook) No. 468, does that appear to  
4 be some type of security badge, along with some ID, the name  
5 on this Robert Swihart?

6 A. Yes, it is.

7 Q. The face there, do you recognize that from a  
8 mug shot of a person involved in this case?

9 A. There's a photograph of George Rivas.

10 Q. I want to go over a couple of items that you  
11 recovered in the Jeep. Did you recover numerous items of  
12 ammunition throughout the Jeep?

13 A. Yes, we did.

14 Q. Let me show you State Exhibit 354. What is in  
15 that particular bag?

16 A. A two-way radio, batteries, purple duct tape,  
17 rubber bands.

18 Q. Was a scanner also found in the Jeep, if you  
19 recall?

20 A. I believe there was.

21 Q. Okay. Let me show you State Exhibit 483.  
22 What is that?

23 A. There's a Colorado Springs and Pueblo scanner  
24 frequency list and then there's some earpieces for a  
25 scanner.

1 Q. Would this be the same type of information  
2 that was contained in the frequency book that we saw  
3 earlier?

4 A. Yes.

5 Q. But this is for the Colorado Springs area?

6 A. Correct.

7 Q. Lists the Colorado Springs Police Department,  
8 as well as the El Paso County Sheriff's Office?

9 A. Yes.

10 Q. No. 356, is this an example of the type of  
11 ammunition, different types of ammunition and boxes of  
12 ammunition that you found throughout the Jeep?

13 A. Yes, it is.

14 Q. Let me show you what has been marked as State  
15 Exhibit 359. Inside that State Exhibit 359-A, is this an  
16 item you recovered from the Jeep?

17 A. It is.

18 Q. What's that item?

19 A. This is a nightvision scope.

20 Q. Okay.

21 MR. SHOOK: We'll offer State Exhibit 359  
22 and 359-A.

23 MR. SANCHEZ: No objection.

24 THE COURT: Nos. 359 and 359-A will be  
25 admitted.

1 Q. (By Mr. Shook) And what is a nightvision  
2 scope used for?

3 A. Basically, it's for seeing in the dark. It  
4 illuminates vision in your area.

5 Q. And then State Exhibit 363, what is that?

6 A. Another bandolier containing shotgun  
7 ammunition.

8 Q. Found in the Jeep?

9 A. Yes.

10 MR. SHOOK: We'll offer State Exhibit  
11 363.

12 MR. SANCHEZ: No objection.

13 THE COURT: No. 363 shall be admitted.

14 Q. (By Mr. Shook) Let me show you State Exhibit  
15 458. Was there a search conducted of some of the bags there  
16 in the back cargo compartment?

17 A. Yes.

18 Q. State Exhibit 459, do we see a shotgun that  
19 was recovered?

20 A. Yes, we do.

21 Q. The bandolier there, is that the bandolier  
22 that the jury has now and is passing around?

23 A. Yes, it is.

24 Q. Let me show you State Exhibits 460 and 461.  
25 Does this show the -- 460 show the shotgun after it's been

1 unarmed?

2 A. Yes.

3 Q. How many shells were in that particular one?

4 A. Okay. There was a total of four, three in the  
5 magazine and one in the chamber.

6 Q. Okay. Let me show you State Exhibit 320. Was  
7 this the shotgun that we see in the photograph that was  
8 taken into custody?

9 A. Yes, it is.

10 MR. SHOOK: We'll offer State Exhibit  
11 320.

12 MR. SANCHEZ: No objection.

13 THE COURT: No. 320 shall be admitted.

14 Q. (By Mr. Shook) What type of weapon is 320?

15 A. A Remington shotgun.

16 Q. Okay. Is it -- has it been altered in any  
17 way?

18 A. Yes, in two ways. This particular one, the  
19 barrel has been sawed off, as well as the stock.

20 Q. Okay. And a strap was attached to it in this  
21 manner?

22 A. Yes.

23 Q. Based on your experience in law enforcement,  
24 what is the purpose for altering a shotgun in this manner?

25 A. It makes it more easily to -- easy to conceal.



1 MR. SHOOK: Your Honor, we will pass the  
2 witness.

3 MR. SANCHEZ: I have no questions of this  
4 witness, Your Honor.

5 THE COURT: Very well, thank you, Special  
6 Agent Mahoney. You may stand down. May this witness be  
7 excused?

8 MR. SHOOK: No objection.

9 MR. SANCHEZ: No objection.

10 MR. SHOOK: We'll call Special Agent  
11 Gooderham.

12 MILES GOODERHAM,  
13 having been duly sworn, was examined and testified as  
14 follows:

15 DIRECT EXAMINATION

16 BY MR. SHOOK:

17 Q. Would you tell us your name, please.

18 A. Miles Gooderham.

19 Q. And how are you employed, sir?

20 A. I'm a Special Agent with the FBI.

21 Q. Special Agent Gooderham, where are you  
22 assigned?

23 A. I'm assigned to the Denver, Colorado, Field  
24 Office.

25 Q. What are your duties there?

1           A.       I'm presently assigned to a white-collar crime  
2 squad. I'm also assigned to the Division's Evidence  
3 Response Team.

4           Q.       As part of -- and you have been trained in the  
5 collection and processing of evidence for your duties with  
6 the Evidence Response Team?

7           A.       That's correct.

8           Q.       Did you respond up to the Woodland Park area  
9 on January 22nd of 2001?

10          A.       I did.

11          Q.       And did you participate in the search and  
12 seizure of evidence from the RV located there?

13          A.       Yes, sir.

14          Q.       What was your assignment? What area of the RV  
15 did you search?

16          A.       I was responsible for the exterior of the  
17 motor home, the area around the motor home, as well as any  
18 storage compartments located on the outside of the motor  
19 home.

20          Q.       Let me show you some photographs which have  
21 been marked State Exhibits 469 through 478 and ask you if  
22 you recognize those as photographs of items and areas that  
23 were searched at the RV that evening and early morning  
24 hours?

25          A.       Yes, sir, they are.

1 MR. SHOOK: We'll offer State Exhibits  
2 469 through 478.

3 MR. SANCHEZ: No objection, Your Honor.

4 THE COURT: Nos. 469 through 478 shall be  
5 admitted.

6 Q. (By Mr. Shook) Let me show you 468 first.  
7 What are we looking at there?

8 A. This is a photograph of one exterior storage  
9 compartments located on the driver's side of the motor home.

10 Q. Okay. And do we see after it's been opened,  
11 are those some items that you searched after they were  
12 photographed?

13 A. That's correct.

14 Q. Let me show you State Exhibit 470. This  
15 particular bag here, did that contain some other items that  
16 were inside a garbage bag?

17 A. Yes, it did.

18 Q. Did that particular bag cause you some concern  
19 once you started searching it or examining it?

20 A. Yes, sir, it did.

21 Q. Why is that?

22 A. When I reached into the bag and pulled out the  
23 garbage bag, it was a heavy item and I wasn't certain what  
24 was causing it to be so heavy.

25 Q. Okay. Did you take some precautions there to

1 make sure you weren't dealing with anything lethal at that  
2 time?

3 A. Yes, sir, we did.

4 Q. What do we see in the next photograph?

5 A. In the photograph here it depicts the item  
6 after it was removed from the garbage bag. It was a bunch  
7 of items wrapped in duct tape and then around the duct tape  
8 was a white cloth or towel and that was placed inside the  
9 trash bag.

10 Q. And State Exhibit 472, does that show the  
11 items after the bag has been opened?

12 A. Yes, it does.

13 Q. What types of things were located in there?

14 A. Inside the bag were handgun frames, handgun  
15 cylinders, handgun grips, and yokes.

16 Q. And 473, is that another photograph of some of  
17 the grips and cylinders that we can see?

18 A. That's correct.

19 Q. No. 474, what do we see there?

20 A. These are -- this is a picture that depicts  
21 the handgun frames laid out on a table once they were  
22 removed from the bag.

23 Q. Okay. There are some items in front of you,  
24 some handgun frames, which have been marked State Exhibits  
25 324 through 333. Are these the frames that we have seen in

1 the photographs and the items that you took into custody?

2 A. Yes, they are.

3 MR. SHOOK: We'll offer State Exhibits  
4 324 through 333.

5 MR. SANCHEZ: We have no objection, Your  
6 Honor.

7 THE COURT: Nos. 324 through 333 shall be  
8 admitted.

9 Q. (By Mr. Shook) Let me show you some other  
10 items which have been marked State Exhibits 479, 480, and  
11 496. Are these other parts of the weapons that were also  
12 contained in the bags that you took into custody?

13 A. Yes, they are. They're the cylinders, yokes,  
14 and grips from the handguns.

15 MR. SHOOK: We'll offer 479 and 480, as  
16 well as 496 at this time.

17 MR. SANCHEZ: No objection.

18 THE COURT: Nos. 479, 480, and 496 shall  
19 be admitted.

20 Q. (By Mr. Shook) State Exhibit 475, is that  
21 another bag that you found under the RV?

22 A. That's correct.

23 Q. And 476, does that show some items that were  
24 contained in the bag?

25 A. Yes, sir, it does.

1 Q. What are we seeing there?

2 A. Inside that bag were electronic communication  
3 devices, radios, and scanner-type items.

4 Q. And 477, does that show another different  
5 black bag that had similar type of equipment in it?

6 A. Yes, sir, it does.

7 Q. Let me show you a green bag that has been  
8 marked 481. Is that the green bag that we see in the  
9 photograph that you took into custody?

10 A. Yes, it is with the scanners, radios, other  
11 scanners, and other electronic communication devices inside.

12 Q. And 846, is that the black bag we saw in the  
13 photograph with the radio electronic equipment?

14 A. It is.

15 MR. SHOOK: Your Honor, at this time we  
16 offer State Exhibits 846 and 481.

17 MR. SANCHEZ: No objection.

18 THE COURT: Nos. 481 and 846 shall be  
19 admitted.

20 MR. SHOOK: We'll pass the witness, Your  
21 Honor.

22 MR. SANCHEZ: No questions, Your Honor.

23 THE COURT: Thank you, Special Agent, you  
24 may stand down.

25 MR. SHOOK: May this witness be excused?

1 MR. SANCHEZ: That's fine with us, Your  
2 Honor.

3 THE COURT: He may.

4 MR. SHOOK: We call Lannie Emanuel.

5 LANNIE EMANUEL,  
6 having been duly sworn, was examined and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. SHOOK:

10 Q. Would you tell us your name, please.

11 A. My name is Lannie G. Emanuel.

12 Q. How are you employed, sir?

13 A. I'm employed with the Southwestern Institute  
14 of Forensic Sciences. That's sometimes referred to as the  
15 Dallas County Crime Lab or SWIFS.

16 Q. What are your duties there?

17 A. Some of my duties include the examination of  
18 firearms, examination of ammunition and ammunition  
19 components, microscopic examination of questioned bullets,  
20 cartridge cases, and toolmarks. I'm also responsible for  
21 serial number restorations of obliterated serial numbers,  
22 distance determinations, fracture matches, and examination  
23 of security devices.

24 Q. Can you tell the jury the training that you  
25 have had for the position that you hold?

1           A.       My formal training in firearm and toolmark  
2 came when I was on active duty with the United States Army.  
3 This was a two-year resident course of instruction that  
4 began in 1979. After successful completion of the course, I  
5 was assigned to several laboratories within the U. S. Army  
6 Crime Laboratory system, the first being in Fort Gordon,  
7 Georgia.

8                   I also had a tour of duty at the Fort  
9 Gillum laboratory, which is located just outside of Atlanta,  
10 Georgia. I was then transferred to the European laboratory  
11 located in Frankfort, germany, and I returned to the Fort  
12 Gillum laboratory just prior to my decision to retire from  
13 active duty and come to work for Dallas County in 1990.

14           Q.       Mr. Emanuel, you are the firearms examiner  
15 that conducted several tests on bullet fragments, casings,  
16 and handguns that were submitted to you during the  
17 investigation of the capital murder of Aubrey Hawkins by the  
18 Irving Police Department; is that correct?

19           A.       That's correct.

20           Q.       You do several tests out there. Is one of  
21 those comparing bullets, bullet fragments, from autopsies,  
22 recovered from autopsies and crime scenes to each other and  
23 also to handguns?

24           A.       Yes.

25           Q.       In that type of comparison are you sometimes



1 able to match a particular bullet or bullet fragment to a  
2 particular weapon?

3 A. Yes, provided there is sufficient marks on the  
4 items involved.

5 Q. Could you explain to the jury how that process  
6 occurs?

7 A. In the case of, for example, a bullet, when a  
8 bullet is fired down a barrel, it picks up certain  
9 characteristics. The first would be class characteristics  
10 and class characteristics would be imparted through the  
11 rifling in the barrel. And the rifling is placed in the  
12 barrel during the manufacturing process.

13 As an example, it could be five lands and  
14 grooves with right twist. That's something that the  
15 manufacturer designates and actually produces that way.

16 The other thing that we look for as it's  
17 forced down the barrel, individual marks or individual  
18 characteristics will also be placed on the bullet or the  
19 projectile. These marks or characteristics are individual  
20 and they are to one gun and only one gun will produce that  
21 type of mark or that particular mark. And those are the  
22 marks that we look for microscopically under the scope  
23 during our comparison process.

24 Two basic examinations are available. If  
25 we have items of evidence from the scene that are submitted,

1 we can intercompare them without a weapon. If a firearm is  
2 later developed or a firearm is developed and submitted, we  
3 would test fire the firearm, obtain known standards from  
4 that, and then use that to compare to the unknown bullets or  
5 cartridge casings.

6 Q. The jury has heard some evidence of copper  
7 jackets and lead bullets. But if you could give them a  
8 little more detail of what a copper jacket bullet is and how  
9 that fits in with your comparison.

10 A. A copper jacketed bullet designates a  
11 particular type of projectile. And it's actually made by  
12 taking a copper jacket and semihard metal jacket and placing  
13 a lead core in it. And it's done in such a way that it's  
14 sealed within the metal jacketing. Of course, when it's  
15 fired down the barrel, the part that comes in contact with  
16 the barrel would be the metal jacket and that would pick up  
17 the marks that I talked about earlier. The lead core, of  
18 course, is encased within that jacketing and it would not  
19 pick up any of the marks that we use for comparison  
20 purposes.

21 Q. When a copper jacketed bullet is fired, does  
22 the copper jacket come off the lead core at times?

23 A. Not routinely. However, if the bullet were to  
24 strike something that could disrupt it, break it up,  
25 fragment it, it could. And there are bullets that are

1 submitted in the laboratory that have the -- the jackets  
2 have pulled off of the lead core.

3 Q. If a lead core, for instance, is recovered  
4 from -- during an autopsy, would you be able to do any types  
5 of comparisons or match that to any gun, if you just  
6 recovered the lead core and not the copper jacket?

7 A. I would say routinely no. Again, the lead  
8 core is contained within the jacketing and it doesn't come  
9 into contact with the barrel; therefore, it does not pick up  
10 any of the marks that we need to examine.

11 Q. Now, the Irving Police Department submitted to  
12 you a number of bullet fragments that they recovered from  
13 their crime scenes from various cars involved and also the  
14 pavement out there; is that correct?

15 A. Yes.

16 Q. And in addition to that, did the ME's Office,  
17 Dr. Barnard, submit to you some projectiles that he  
18 recovered from the autopsy of Officer Hawkins?

19 A. Yes.

20 Q. Was there one .357 revolver that was submitted  
21 to you at the time that the crime occurred that was fully  
22 intact?

23 A. Yes. In the initial evidence submission there  
24 was one.

25 Q. And I believe that would be what's been marked

1 as State Exhibits 178; is that correct?

2 A. Yes, it is.

3 Q. Okay. And then at a later date were some  
4 other bullet frames, along with cylinders, yokes, and grips,  
5 gun frames, also submitted to you?

6 A. Yes.

7 Q. And before you is State Exhibits 324 through  
8 333. You have examined these outside the presence of the  
9 jury?

10 A. Yes.

11 Q. Are these the gun frames that were submitted  
12 to you?

13 A. Yes, they are.

14 Q. And then these packages that are before you,  
15 State Exhibits 480, 479, and I believe that's 496, are those  
16 the yokes, the cylinders, and the pistol grips that were  
17 also submitted to you?

18 A. Yes, they are.

19 Q. And you conducted examinations on all of  
20 these?

21 A. Yes.

22 Q. Now, as far as the fact that the guns were  
23 disassembled, did that prevent you in any way from  
24 conducting firearms tests on them?

25 A. No, it didn't, not to obtain a test bullet

1 from each of the barrels.

2 Q. Okay. First of all, on State Exhibit 178, the  
3 gun that was first submitted to you, what type of weapon is  
4 that?

5 A. This is a revolver. It's .357 caliber Smith &  
6 Wesson manufacturer.

7 Q. And did you conduct a test to find out what  
8 the trigger pull was on that particular weapon?

9 A. Yes, I did.

10 Q. What were the results of your tests?

11 A. The single-action trigger pull was between  
12 three and three-quarter pounds and four pounds. The  
13 double-action trigger pull was between ten and ten and  
14 one-quarter pounds.

15 Q. You conducted firearm tests from all those  
16 weapons and compared them to the projectiles that were  
17 submitted to you by the Irving Police Department; is that  
18 right?

19 A. That's correct.

20 Q. Were you able to match some of those bullet  
21 fragments to some of these weapons?

22 A. Yes.

23 Q. And to make your testimony more clear, I  
24 believe you color coded the weapons with some of the  
25 canisters that you matched comparisons to, correct?

1 A. That's correct.

2 Q. Let's go over some of those matches now.

3 MR. SHOOK: Can I have the witness step  
4 down, Your Honor?

5 THE COURT: You may.

6 Q. (By Mr. Shook) Let me first show you what has  
7 been marked as State Exhibit 324. Were you able to match  
8 that particular weapon to some of the bullet fragments  
9 recovered from the autopsy, as well as the bullet fragments  
10 from the crime scene?

11 A. Yes. This is my item 140 on my report. And I  
12 was able through microscopic examination of the items  
13 submitted, it was determined that items 1, my item on my  
14 report, items 1, 7, 11, and 42, bullet jackets as having  
15 been fired through this barrel.

16 Q. Let's start with some of the bullet fragments  
17 that were recovered from the autopsy which are reflected  
18 here on the mannequin. Let me show you what has first been  
19 marked as State Exhibit 213. Does Dr. Barnard indicate on  
20 the packaging where he recovered that particular bullet  
21 fragment?

22 A. Yes. This is designated as removed from the  
23 uniform shirt.

24 Q. Okay. And would that be the particular  
25 exhibit marked here in purple corresponding with the

1 markings you placed on 213?

2 A. Yes.

3 Q. And that was matched to that particular  
4 weapon, 324?

5 A. Yes.

6 Q. And State Exhibits 214 and 215, were they also  
7 matched to that particular weapon?

8 A. Yes, they were.

9 Q. And where does Dr. Barnard indicate on those  
10 exhibits where those bullets came from?

11 A. No. 214 is designated as removed from left  
12 cheek.

13 Q. And that would be indicated here by the  
14 marker?

15 A. Yes. And State Exhibit 215, my item No. 1,  
16 removed from clothes.

17 Q. And that would be --

18 A. Down here.

19 Q. -- down here. Were there some other matches  
20 made with that particular weapon to some items submitted to  
21 you from the crime scene?

22 A. Yes, I believe there were.

23 Q. And is that reflected in State Exhibit 186-A?

24 A. Yes, my item 42.

25 Q. Here's a diagram that is already in evidence

1 marked State Exhibit 759. And do we see State Exhibit 186-A  
2 reflected in that particular diagram?

3 A. Yes, it is.

4 Q. Now, the next gun that you matched some  
5 projectiles to, I believe, was State Exhibit 321. You used  
6 a color code green for that particular weapon; is that  
7 right?

8 A. That's correct.

9 Q. And were some projectiles from the autopsy  
10 matched to that particular weapon?

11 A. Yes.

12 Q. And are those reflected in State Exhibits 210,  
13 211, and 212?

14 A. Yes, they are.

15 Q. And could you inform the jury as to where  
16 those particular projectiles were recovered from?

17 A. State Exhibit 210, my item No. 9, is  
18 designated removed from the left forearm.

19 Q. Which would be located here?

20 A. That is correct.

21 Q. All right.

22 A. State Exhibit 211, my item No. 6, designated  
23 as removed from left mastoid bone. Here it is.

24 Q. Indicated here?

25 A. Right here.



1 Q. All right.

2 A. And State Exhibit 212, my item No. 3,  
3 designated as removed from the pericardial sac, which would  
4 be this rod.

5 Q. This would be the wound going down indicated  
6 in the neck area on the mannequin?

7 A. Yes.

8 Q. All right. Now, there were some other  
9 projectiles from the autopsy that were submitted to you,  
10 State Exhibits 216 through 220, that you were unable to  
11 match to any weapon; is that correct?

12 A. That's correct.

13 Q. And what would the explanation be for that?

14 A. These items are either fragments or could be  
15 bullet cores.

16 Q. Again, I think we have gone over it, but if  
17 there's a bullet core, you can't usually get enough  
18 characteristics to match that?

19 A. The bullet core, actually, does not pick up  
20 the marks that are necessary for the comparison process.

21 Q. The next weapon you made a match to would be  
22 State Exhibit 323; is that correct?

23 A. That is correct.

24 Q. And you designated that, I believe, in brown?

25 A. Yes.

1 Q. Let me show you what has been marked as State  
2 Exhibits 185-C and D. Are those fragments that you were  
3 able to match to those weapons?

4 A. Yes, they are.

5 Q. And do we see those there on that particular  
6 exhibit? At the top would be 185-D?

7 A. Yes.

8 Q. And designated No. 8 is --

9 A. That's correct.

10 Q. -- 185. Is that all the matches that you made  
11 with that particular weapon?

12 A. Yes.

13 Q. And the next weapon is State Exhibit 322?

14 A. Yes.

15 Q. State Exhibit 185-A and 185-B, are those  
16 fragments that were found at the scene that were matched to  
17 that particular weapon?

18 A. Yes, they are.

19 Q. And, again, are they reflected on the diagram?

20 A. I see 185-A and 185-B, yes.

21 Q. State Exhibit 184-A and 184-B and 488, are  
22 these items that you were able to match to that particular  
23 weapon?

24 A. Yes, they are.

25 Q. Okay. What is 488?

1 A. No. 488 is designated as my items 37 and 38 on  
2 the report. They are two PMC .357 Magnum cartridge cases.

3 Q. And is that a different type of examination  
4 that allowed you to match that particular weapon?

5 A. It's -- the principle is the same. We're  
6 still looking for marks. This is a different portion of the  
7 firearm mark, the item, that I actually look at.

8 Q. Okay. And then 184-A and 184-B appear on the  
9 diagram to be fragments found in the door of the Explorer?

10 A. Yes.

11 Q. Then State Exhibits 186-B and C, I'm not sure  
12 if we have gone over those yet. Those go back to the gun  
13 that you have labeled green which is State Exhibit 321; is  
14 that right?

15 A. I would have to look at it. It's my item 129,  
16 which is State Exhibit 321, yes.

17 Q. Those reflected on the diagram of bullets  
18 recovered from the squad car?

19 A. Yes, that's correct.

20 Q. No. 486-A -- let me ask you this first. Let  
21 me show you what has been marked as State Exhibit 183. Do  
22 you recognize the ammunition in that particular exhibit?

23 A. Yes, I do.

24 Q. And was that ammunition that you examined from  
25 the weapon that was fully intact that was submitted to you,

1 which is State Exhibit 178?

2 A. Yes. It was submitted with this particular  
3 firearm.

4 Q. When it was submitted to you, were there five  
5 live rounds in the weapon?

6 A. The weapon was actually unloaded, but they  
7 were submitted with it.

8 Q. And did you examine the actual live round?

9 A. Yes. I actually disassembled two of them.

10 Q. Okay. Did you notice anything unusual on the  
11 particular rounds from that particular weapon?

12 A. The thing that I noticed -- and these are  
13 lead, round-nosed bullets. They do not have jacketing.  
14 It's a -- lead, of course, is a soft material. And at one  
15 time or another someone has put a cut across the nose of the  
16 bullet.

17 Q. If I could get you just to go kind of up to  
18 the jury rail and go slowly down it to show the jurors the  
19 types of cuts that were put in the bullets.

20 A. [Witness complies.]

21 Q. That would not have been put there by the  
22 manufacturer; is that correct?

23 A. No, this is not the manufacturer.

24 Q. Based on your experience, Mr. Emanuel, what is  
25 the purpose in marking the bullet in that manner?

1           A.     When a projectile is cut like that, the theory  
2 behind it is when it is fired and strikes a target, it is,  
3 an example, human tissue, it will actually cause it to break  
4 up or deform more readily than if it was a complete whole  
5 unit without the marks in it. In other words, it's somewhat  
6 prescored. This was actually started long before items like  
7 modern ammunition. Today we have hollow-point bullets and  
8 soft-nosed bullets that are actually designed to do that.  
9 But before that was developed, that was actually done in an  
10 effort to cause more damage or more wounding power to the  
11 bullet. Of course, it is dependent on velocity. It has to  
12 have sufficient velocity for it to actually break up or  
13 mushroom out.

14           Q.     I'll show you what has been marked as State  
15 Exhibit 182 and did you match this particular fragment to  
16 178?

17           A.     Yes, I did.

18           Q.     And does that indicate on the diagram that 182  
19 was recovered from the dashboard of the squad car?

20           A.     Yes, it does.

21           Q.     Now, as a result of your examinations, how  
22 many different weapons were used during the incident that  
23 occurred behind the Oshman's?

24           A.     Based on the microscopic examinations of the  
25 items that were submitted to me, there are five firearms

1 that were identified as being used during the incident.

2 Q. Could there have been more firearms used?

3 A. Yes. There's a possibility there could be.

4 Q. And why is there a possibility that there  
5 could be?

6 A. Because some of the fragments that were  
7 submitted, I was unable to identify to a particular weapon,  
8 so it has a potential to, number one, be another weapon  
9 involved or, number two, it could actually be one of the  
10 five that I have identified, but I just couldn't say for  
11 sure that that was the one.

12 Q. Now, did you also examine the revolvers and  
13 the revolver frames to try to find some serial numbers or  
14 try to recover some serial numbers from it?

15 A. Yes.

16 Q. What process did you use for that?

17 A. The process that we use or I used in this  
18 particular case is called acid etching polishing technique.  
19 When a serial number is obliterated, the majority of the  
20 time the sandpaper or grinding or scraping is used and  
21 whoever is doing it will usually stop when it's no longer  
22 visible.

23 But when it's -- the weapon is made and  
24 the serial number is imprinted on it, it's done with a lot  
25 of pressure and it actually disturbs the metal where the

1 serial number is impressed into the metal itself.

2 What I do is I polish that out to take  
3 off all of the marks that were used to obliterate it and I  
4 place acid on it. And the acid etches the disturbed metal  
5 at a different rate than it does the normal metal that has  
6 not been damaged during the serial number application. And  
7 it gives the appearance that the number comes back up.

8 Sometimes this works and sometimes it  
9 doesn't. If it's taken down too far and there's no damaged  
10 metal for me to work with, of course, the number cannot be  
11 raised.

12 Q. Were you successful in your examinations to  
13 recover serial numbers on all these weapons?

14 A. Either serial numbers or, I believe, Texas  
15 Department of Correction numbers.

16 Q. Let me show you what has been marked as State  
17 Exhibit 495. Is this a diagram that you prepared to assist  
18 you in your testimony?

19 A. I didn't prepare the chart, but this is from  
20 my report, yes.

21 Q. And does this have the Texas Department of  
22 Corrections number, as well as the serial numbers that you  
23 were able to recover in your process?

24 A. Yes.

25 MR. SHOOK: Your Honor, at this time

1 we'll offer State Exhibit 495.

2 MR. SANCHEZ: We have no objection.

3 THE COURT: No. 495 shall be admitted.

4 Q. (By Mr. Shook) If you could, explain what we  
5 see on the diagram.

6 A. The first thing in the column to the far left  
7 would be my exhibit number as it's listed in my report. The  
8 next column is a fitting number and that's the number of --  
9 during the manufacture of a firearm like this, there are  
10 pieces that need to be fit together in the early stages of  
11 the manufacture. Then it will go out for processing, either  
12 bluing or nickeling process, perhaps, but they want to keep  
13 those two pieces together.

14 So after they go out to the different  
15 manufacturing areas and come back, they can mate them back  
16 up and that's what is designated as a fitting number. The  
17 third column is a model number. All of these were model 65  
18 revolvers. There were two serial numbers on this particular  
19 model of gun. There's one on the butt of the weapon, which  
20 would be this area right here. And there's also a serial  
21 number under the yoke, which would be this area right here.  
22 They're so designated.

23 I have listed the serial numbers, if they  
24 were available on the frame. If you see an OB, that stands  
25 for obliteration. And if, as an example, my item No. 130,



1 there's a CAA93440B, that serial number in that particular  
2 location was when I received it obliterated and I was able  
3 to restore it to read the numbers that I just read out.

4 The same gun, the Department of  
5 Corrections number was obliterated, but it has a straight  
6 line and that indicates that I was unable to bring that  
7 particular number up. And it carries on down through the  
8 chart.

9 The next column would be the  
10 single-action trigger pull of the different frames. And  
11 there were other numbers that were on the frames that I  
12 designated and listed and some of them had been obliterated  
13 and some of them hadn't.

14 Q. So there are two types of numbers on the  
15 weapons?

16 A. Yes.

17 Q. Let me show you a poster that has been marked  
18 State Exhibit 260. You have seen this poster before, I  
19 believe; is that correct?

20 A. Yes, I have.

21 Q. It contains serial numbers, as well as TDCJ  
22 numbers?

23 A. Yes.

24 Q. Were you able to match one or the other or  
25 both to all the numbers that are reflected in State Exhibit

1 495?

2 A. Yes.

3 MR. SHOOK: We'll pass the witness.

4 CROSS-EXAMINATION

5 BY MR. SANCHEZ:

6 Q. Mr. Emanuel, based on your analysis of the  
7 fragments that were given to you that came from an autopsy  
8 that came from the crime scene and also came from vehicles  
9 that were looked at in this case, you were able to determine  
10 that those fragments came from five guns that you looked at,  
11 correct?

12 A. Yes, the ones that I was able to identify.

13 Q. And that's all you were able to do, correct?

14 A. Yes.

15 MR. SANCHEZ: That's all we have, Your  
16 Honor.

17 MR. SHOOK: We have no further questions.  
18 May this witness be excused?

19 MR. SANCHEZ: No objection.

20 THE COURT: Yes, he may. Thank you, sir,  
21 you are excused from this trial and free to go.

22 MR. SHOOK: May we approach the bench,  
23 Your Honor?

24 (Bench conference)

25 THE COURT: Members of the jury, we've

1 reached a point this afternoon that I can't get the next  
2 witness on and off before, you know, it gets too late.  
3 Tomorrow morning I have other obligations. I must attend a  
4 meeting with the other 14 district judges. I want you to  
5 know what I'm doing and why I'm doing it. It has nothing to  
6 do with this trial. I have a meeting and my obligation will  
7 take me a while.

8 We're not going to be able to start until  
9 10:00 tomorrow morning, 10:00. So, as I said, I'm going to  
10 be a broken record, but I'm going to say it one more time.  
11 You know what I'm fixing to say. No media, no news, no TV,  
12 no newspaper, no Internet, no conversation with the spouses,  
13 friends, or coworkers. Everything that you need to learn  
14 about this case comes from where? Right there. Very good.

15 So with that, it's a beautiful day this  
16 afternoon. You can enjoy the remainder of your afternoon.  
17 Tomorrow morning be ready to go to work at 10:00.

18 [Jury out]

19 [End of Volume]

20

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25

1 STATE OF TEXAS \*

2 COUNTY OF DALLAS \*

3 I, NANCY BREWER, Official Court Reporter for the 283rd  
4 Judicial District Court, do hereby certify that the above  
5 and foregoing constitutes a true and correct transcription  
6 of all portions of evidence and other proceedings requested  
7 in writing by counsel for the parties to be included in this  
8 volume of the Reporter's Record, in the above-styled and  
9 numbered cause, all of which occurred in open court or in  
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of  
12 March, 2004.

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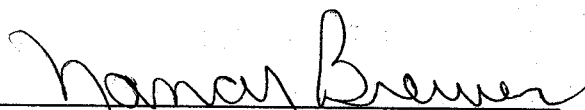
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REPORTER'S RECORD

VOLUME 43 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

\*\*\*\*\*

JURY TRIAL

\*\*\*\*\*

**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

On the 12th day of November, 2003, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable Vickers L. Cunningham,  
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

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P R O C E E D I N G S

[Jury in]

THE COURT: Good morning. Please be seated. Mr. Shook?

MR. SHOOK: Your Honor, we'll call Detective Stinson.

JIM STINSON,

having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. SHOOK:

Q. Would you tell us your name, please.

A. It's James Stinson, S-T-I-N-S-O-N.

Q. And how are you employed, sir?

A. I'm a police officer with the Colorado Springs Police Department in Colorado Springs, Colorado.

Q. How long have you been with the Colorado Springs Police Department?

A. Almost 14 years now.

Q. And what division are you assigned?

A. Right now I'm in patrol.

Q. Okay. Let me talk -- bring your attention back to January 23rd of 2001. What division were you in at that time?

A. I was detective in the Homicide Unit.

1 Q. On that particular date were you given an  
2 assignment, along with other detectives, in relation to the  
3 suspects that had become known to law enforcement as the  
4 Texas Seven?

5 A. Yes, sir.

6 Q. What type of assignment were you given?

7 A. Well, the day before five of the Texas Seven  
8 had been located. Four were arrested and one had committed  
9 suicide and there were still two out on the streets. We  
10 were receiving lots of tips in the police department and so  
11 we were just following up tips, trying to contact the  
12 remaining two.

13 Q. In fact, on that day, the 23rd, had a van been  
14 located in Colorado Springs?

15 A. Yes, sir.

16 Q. What part of the city was it?

17 A. It was in the midwestern portion, closer to  
18 the north.

19 Q. Let me turn your attention to around 7:00 p.m.  
20 that evening and ask if you went to a particular location  
21 and followed up one of those leads?

22 A. Yes, sir. I was partnered up with Detective  
23 Todd Drennan. We received a tip from the Holiday Inn  
24 located at 505 Pope's Bluff Trail. And the receptionist had  
25 checked in a gentleman the night before, using a drivers

1 license under the name of Andres Aguilar. The back of this  
2 drivers license had been peeled off, which she thought was  
3 suspicious. It looked like to her it had been tampered  
4 with.

5 When he came in to -- when this gentleman  
6 came into the Holiday Inn the night before, he was wearing a  
7 blue hooded jacket with the hood over his head. He didn't  
8 come in from the front door, but he came in from a hallway.  
9 That's when the receptionist first saw him.

10 When he came up to pay for a room, asked  
11 for a room, he, like I said, he had this hood on, but he was  
12 looking down at his feet. He wouldn't have eye contact with  
13 this receptionist. He said he wanted a room for the night.  
14 Said it didn't matter to him what it cost and he paid for  
15 the room with a 100-dollar bill.

16 Q. In fact, did he request another room later  
17 that evening?

18 A. Yes. Later on he called back and stated that  
19 he wanted another room. He wanted a smoking room. So he  
20 moved -- he originally was given room 211 and they moved him  
21 to room 426.

22 Q. Did you, yourself, look at his identification  
23 or a copy of the identification?

24 A. A photocopy of it, yes, sir.

25 Q. Did his photograph resemble any of the

1 suspects that you were looking for?

2 A. Well, yes. We were carrying photocopies of  
3 the two gentlemen we were looking for, Patrick Murphy and  
4 Donald Newbury. And with the quality of the photocopies,  
5 there's a resemblance between Mr. Aguilar and Mr. Newbury.

6 Q. As a result of listening to what she had seen  
7 and heard with this person, what did you decide to do then?

8 A. Well, there were approximately 17 teams of  
9 detectives out following tips. We had a SWAT Team on  
10 standby, meaning that they had all their gear on, they were  
11 ready to answer anything that was suspicious. Something  
12 like this, this seemed to have a little more umph to it, so  
13 we called our sergeant and advised him of what was going on.

14 And we had a SWAT Team respond to a  
15 location where we briefed him on what was going on. By this  
16 time I had a map of the hotel, found out that there was a  
17 vacant room immediately adjacent to the room that these  
18 gentlemen or Mr. Aguilar had rented. And other than that,  
19 the whole wing was completely occupied.

20 We met with the SWAT Team about two miles  
21 away, gave them the card keys, and planned the approach.  
22 And then we came back to the hotel.

23 Q. What was your purpose, then, to -- in meeting  
24 the SWAT Team two miles away?

25 A. Well, initially we were going to meet them

1 across the street, but across the street is where the van  
2 was found and there was quite a bit of media attention  
3 there. So, I mean, there were probably 20, 30 satellite  
4 trucks from different news stations around. So we couldn't  
5 do it anywhere close, because we didn't want to get the  
6 media involved or in the way, so we just moved it farther  
7 down the street.

8 Q. Let me show you some photographs which have  
9 been marked State Exhibit 781 through 786 and ask you if you  
10 recognize those as being some aerial photos of the Holiday  
11 Inn, as well as some photos of the Holiday Inn itself and  
12 some interior shots?

13 A. Yes, sir.

14 MR. SHOOK: Your Honor, at this time we  
15 offer State Exhibits 781 through 786.

16 MR. SANCHEZ: No objection, Your Honor.

17 THE COURT: Nos. 781 through 786 shall be  
18 admitted.

19 Q. (By Mr. Shook) Looking on the monitor, does  
20 that show us an overview of where the Holiday Inn was  
21 located?

22 A. Yes, sir, it does.

23 Q. Where do we see that on the monitor?

24 A. Okay. This is the front area where the  
25 check-ins are made and back over here is where room 426 is

1 on the lower floor.

2 Q. Okay. Can we see where -- the area where the  
3 van was located earlier that day in that photograph?

4 A. To the top of the photograph you can almost.  
5 It's just right above where the --

6 Q. I think we may see that in the next photo.  
7 Does that show the --

8 A. Yes, sir. It's right over here was where the  
9 van was found. This is the restaurant called the Hungry  
10 Farmer Restaurant. It's roughly three-quarters of a mile  
11 from where the van was found to where the Holiday Inn is.

12 Q. Let me show you State Exhibit 783. Is this  
13 the entrance to the Holiday Inn?

14 A. Yes.

15 Q. That's where you went to talk with the  
16 receptionist?

17 A. Yes.

18 Q. And then the room you were concerned with was  
19 426?

20 A. Yes, sir.

21 Q. Is that a photo of the door 426?

22 A. Yes, sir.

23 Q. And then 785, does this show the room along  
24 with kind of -- with the hallway there?

25 A. Yes. This next room is 422.



1 Q. And 786, what does that photo show us?

2 A. This is 426, the sliding glass door to the  
3 back of room 426.

4 Q. After you had met with the Tact officers, did  
5 you then proceed then to go back to the Holiday Inn?

6 A. Yes.

7 Q. Approximately what time did you arrive there?

8 A. That was roughly 9:30 p.m.

9 Q. As you got out of your vehicles, did you  
10 approach the Holiday Inn yourself at that time?

11 A. No. As we were driving, mind you, I was a  
12 detective, so I was wearing just clothes like this. I did  
13 not have a vest on, so I wasn't going to make the initial  
14 contact.

15 So as we were pulling up, ironically  
16 enough, a media helicopter flew right overhead and as the  
17 SWAT guys were unloading from their van and setting up the  
18 outer perimeter, then we just pulled past the room and they  
19 had their approach team come in and they went in through the  
20 locked doors, but I had the keys and they made their  
21 approach and knocked on room 426.

22 Q. Did you stay in communication with those  
23 officers?

24 A. Yes, I did, via telephone.

25 Q. Did anyone answer the door at that time?

1 A. No.

2 Q. What was your next move?

3 A. After they received no answer, the sergeant,  
4 Sergeant Lofgren from the SWAT Team, called me and asked for  
5 me to call the front desk and have a phone call in to 426 to  
6 see if they would answer the telephone.

7 Q. Did you do that at that time?

8 A. Yes.

9 Q. Were you able to make contact at that point in  
10 time?

11 A. No, sir.

12 Q. What happened then?

13 A. After that Detective Drennan and I then went  
14 into the Holiday Inn and, like I said before, room 422 is  
15 immediately adjacent. We opened up that room and the SWAT  
16 Team still had one of the their lookouts sitting at the door  
17 of room 422, but the whole team and Detective Drennan and I  
18 went into this room where we were going to make plans on  
19 what we were going to do next.

20 Q. So you are right next door to where the  
21 suspects -- or where you thought they may be located?

22 A. Exactly, yes.

23 Q. Then what happened?

24 A. After a couple of minutes, I guess roughly 30  
25 minutes, of trying to come up with a plan, I was talking to

1 my sergeant on the telephone. Sergeant Lofgren was talking  
2 to his lieutenant. We were trying to figure out what the  
3 game plan was. And we also had other detectives following  
4 up on trying to identify Andres Aguilar to see if he could  
5 be contacted and see what his story was.

6 During that time we had a lot of phone  
7 calls on cell phones. We had phone calls routed in through  
8 the front desk and when the phone rang from the front desk  
9 and I spoke with the receptionist and they said that one of  
10 the occupants of room 426 had called and was asking if  
11 somebody was looking for them.

12 Q. Did you -- were you able to make contact with  
13 the room?

14 A. Yes. After I received that phone call, I  
15 advised Sergeant Lofgren, so he redeployed his men and then  
16 I called up room 426.

17 MR. SHOOK: Judge, could we approach the  
18 bench for a moment?

19 (Bench conference)

20 THE COURT: Members of the jury, I need  
21 to have a hearing. Go with the Sheriff and I'll have you  
22 back in just a minute.

23 [Jury out]

24 THE COURT: Let the record reflect the  
25 jury has been retired pursuant to the pretrial motions filed

1 by the defense. The Court needs to conduct a hearing on the  
2 admissibility of certain evidence that the State tenders at  
3 this time. Mr. Shook?

4 Q. (By Mr. Shook) Detective Stinson, at that  
5 point in time were you able to talk with an occupant in that  
6 room?

7 A. Yes, I was.

8 Q. And what did he say to you?

9 A. I advised -- when the gentleman answered the  
10 phone, I was giving him the benefit of the doubt. And I  
11 said, "Andres"? And the person on the phone said, "Yeah."  
12 And I said, "This is Detective Stinson with the Colorado  
13 Springs Police Department." I told him that I was part of  
14 this group of people looking for the remaining two Texas  
15 fugitives.

16 And I asked him to step outside. I told  
17 him his room was surrounded and I asked him to step outside  
18 with his hands up and after we identified him, we would let  
19 him go on his way, unless he was one of the fugitives.

20 Q. What did he say?

21 A. He said, quote, "Well, Detective, you found  
22 us," end quote.

23 Q. Then what happened?

24 A. I was trying to get Sergeant Lofgren's  
25 attention to let him know that, you know, that this

1 gentleman had identified himself as one of the fugitives. I  
2 then began to try to stall for time. The whole -- like I  
3 said before, the whole wing was occupied with people. And  
4 if there was going to end up being a shootout, we wanted to  
5 get as many people out as possible.

6 So I just began talking to him. Asked  
7 him who he was. He said he was Patrick. I knew that to be  
8 Patrick Murphy. I'm from Austin, so I know a little bit of  
9 the area and I knew he was from Rockdale. And we started  
10 talking about Rockdale.

11 Q. Did he ask you how you had found him?

12 A. Yes, he did.

13 Q. And after you spoke with him, at some point in  
14 time did he want to hang up the phone?

15 A. Yes, I spoke with him for a few moments. He  
16 wanted to speak to a supervisor and I let Sergeant Lofgren  
17 talk to him for a few seconds and then he hands me back the  
18 phone. We talked a little bit more. I asked him if he was  
19 going to come out and he said he didn't know what he was  
20 going to do at that time, but he did want to get his phone  
21 on a speaker phone. And I told him, you know, I made it  
22 sound like I wasn't anywhere around him. I said, I don't  
23 know what kind of phone you have, even though I was probably  
24 about two feet from him. And I told him I didn't know how  
25 to convert his phone to a speaker phone. And I asked him

1 why he needed to have this done and he said he wanted to  
2 keep his hands free.

3 Q. Did he get agitated when you couldn't help  
4 him?

5 A. Yes. He seemed agitated. Then he told me he  
6 just didn't want to talk to me anymore and he hung up the  
7 phone.

8 Q. Did you establish contact with him again a  
9 short time later?

10 A. Yes. While I was doing that -- you know, that  
11 conversation lasted maybe five minutes. And while I was  
12 doing that they were -- the SWAT guys and Detective Drennan  
13 were able to get one person out catty-cornered to room 422.  
14 So we transferred to her room, 416 I believe, and went over  
15 there.

16 And as they were still trying to get  
17 people out, I recontacted 426. They had called -- the  
18 people in 426 had called the front desk. The front desk  
19 called me because I was letting them know we had changed  
20 rooms. They told me that 426 was wanting a phone call  
21 again. So then I called back and spoke to Mr. Murphy  
22 briefly again. The receptionist advised me that they had  
23 called back, so I put in a phone call to room 426 again and  
24 spoke with Mr. Murphy again and we talked for a brief moment  
25 and then he put Mr. Newbury on the phone and I talked to him

1 for --

2 Q. When you called Mr. Murphy back the second  
3 time, did you ask him what he was doing?

4 A. Yeah. I said, "What's going on?" And he  
5 said, "Well, we're watching a porno movie," or watching  
6 porn.

7 Q. And then you talked with Mr. Newbury?

8 A. Yeah. I talked with him for about five or six  
9 minutes after that.

10 Q. Did Mr. Newbury -- did he want to know how his  
11 friends were doing in Teller County?

12 A. Yes, he asked that question.

13 Q. And did he also want to know if you were  
14 impressed that he had been out for forty days?

15 A. Yes. He was talking about how they were on  
16 "America's Most Wanted" for four weeks in a row and that had  
17 never been done before.

18 Q. And did he make some comments about the host  
19 of "America's Most Wanted"?

20 A. Yes, he did. He said he was a dick, John  
21 Walsh.

22 Q. And soon after that were negotiations turned  
23 over to Matt Harrell?

24 A. Yes. Newbury and I talked for a little while  
25 and he asked what my rank was and I told him I was a

1 homicide detective and he apologized and said, "I'm not  
2 trying to disrespect you. I'm sure that's impressive, but I  
3 want to talk with somebody with more power, somebody from  
4 the FBI or ATF."

5 And I told them, I said, you know,  
6 listen, there's a whole lot of cops out here. It's going to  
7 take me a while to find somebody. And I need him, I needed  
8 about fifteen minutes, once again, stalling for more time.

9 MR. SHOOK: That's all we have of this  
10 witness, Judge.

11 THE COURT: Ms. Busbee, do you have any  
12 questions?

13 MS. BUSBEE: Yes, Your Honor, I do.

14 CROSS-EXAMINATION

15 BY MS. BUSBEE:

16 Q. Detective Stinson, you said that when you got  
17 him on the telephone you were stalling. Could you tell us  
18 what you did to stall?

19 A. Just -- I spoke with Mr. Murphy about  
20 Rockdale. I spoke to Mr. Newbury about Brady, Texas. I was  
21 asking him about his family, just anything to keep him  
22 talking and just so we could get more people into position  
23 and get the people in the hotel room evacuated -- in the  
24 hotel wing evacuated.

25 Q. So your first conversation with him was about



1 coming out of the room --

2 A. Yes, ma'am.

3 Q. -- is that right?

4 A. Yes.

5 Q. And then you decided to stall him?

6 A. Well, when he identified himself as being one  
7 of the two we were looking for, it became apparent to me  
8 that he wasn't just going to open the door automatically.  
9 So at that time, just kicked in to start stalling.

10 Q. How did that become apparent to you?

11 A. Because he didn't say he was going to do it.  
12 He didn't say, okay, I'll do that.

13 Q. Did you ask him?

14 A. I asked him to come out and keep his hands up  
15 and once he did that and we identified him, we would let him  
16 go, if he wasn't one of the two.

17 Q. And then he said he was one of the two or  
18 words to that effect and then you decided to stall?

19 A. He didn't make any comments about him coming  
20 out. The doors weren't opening so --

21 Q. What was the next thing he said after he said,  
22 "Well, Detective, you got me," what was the next thing that  
23 was said?

24 A. I was asking him who he was and that's when he  
25 said he was Patrick.

1 Q. Okay. And then what was the next thing that  
2 was said?

3 A. I don't remember immediately. Around that  
4 time we started talking about being from Rockdale.

5 Q. Okay. And in order to buy some time, you  
6 asked him questions about where he was from?

7 A. Yes.

8 Q. And do you remember what questions you asked  
9 him?

10 A. Just where he was from. He said Rockdale.  
11 I'm familiar with that area and we talked about -- when I  
12 was out of high school I had a job as a produce deliverer.  
13 I delivered to some stores in Rockdale. We talked about  
14 that and we talked about people who worked at the U-Tote-Ums  
15 back there.

16 Q. And about how long did you talk to him about  
17 Rockdale?

18 A. Oh, a couple of minutes. The first  
19 conversation with him was maybe five minutes.

20 Q. Okay. Now, I notice that you say that he  
21 became frustrated or decided that he didn't want to talk to  
22 you anymore. At what point did he become frustrated?

23 A. When I couldn't tell him how to change his  
24 telephone to a speaker phone.

25 Q. Okay. Now, the next thing is that you get a

1 call from the front office; is that correct?

2 A. No. The next thing is he hung up on me. And  
3 then we transferred rooms from 422 to 416.

4 Q. Okay. I guess that's true. The next contact  
5 or concerning these conversations was you got a phone call  
6 from someone who said they were at the front desk?

7 A. Right.

8 Q. And said that they had called, wanting to talk  
9 to someone?

10 A. Yes.

11 Q. Okay. And did you call the room again?

12 A. Yes, I did.

13 Q. And did you ask them if they wanted to  
14 reinitiate the conversation?

15 A. No. I just spoke with Mr. Murphy who answered  
16 the phone.

17 Q. Okay. Now, had you ever spoken with Mr.  
18 Murphy before?

19 A. No, I had not.

20 Q. Did you talk with him after he was arrested?

21 A. Yes, I did.

22 Q. How long did you talk to him?

23 A. Enough time to walk him from the Holiday Inn  
24 to the police car.

25 Q. And what did that conversation consist of?

1           A.       We talked about how cold it was, how he  
2 enjoyed his stay in Colorado. He didn't have a shirt on.  
3 We were talking about the temperature and we were walking  
4 through snow.

5           Q.       Did you ever talk to Mr. Newbury outside?

6           A.       No, I did not.

7           Q.       Now, I had an opportunity to look at your  
8 report and read your prior testimony. I don't see anywhere  
9 in here where you Mirandized Mr. Murphy or anybody when you  
10 were on the phone with him; is that correct?

11          A.       That's correct.

12          Q.       And did you make any recordings of these  
13 conversations?

14          A.       With my conversations? No, I did not.

15          Q.       Did you make any notes?

16          A.       No, I did not.

17          Q.       That's understandable. I just wanted to know  
18 if you had. This is a silly question, I suppose, but was  
19 Mr. Murphy free to leave that room?

20          A.       He was free to move about the room.

21          Q.       Was he free to walk out of that room and go  
22 about his business?

23          A.       He was free to walk out of the room, yes.

24          Q.       That's not exactly an answer to my question.  
25 Was he free to leave the room and go about his business?

1           A.       Once he left the room, he would not be going  
2 about his business, no.

3           Q.       And, in fact, you told him that there was a  
4 SWAT Team in place; is that correct?

5           A.       Yes, yes, I did.

6           Q.       Okay. And do you remember exactly what you  
7 told him?

8           A.       I just told him he was completely surrounded.

9           Q.       Okay.

10          A.       He indicated that he knew that, because he had  
11 heard the helicopter. He thought it was a police  
12 helicopter.

13          Q.       Okay.

14                   MS. BUSBEE: That's all the questions  
15 that I have right now for this hearing outside the presence.

16                   THE COURT: Do you reurge your motion?

17                   MS. BUSBEE: Yes.

18                   MR. SHOOK: Judge, we have one more  
19 witness, if you want to hear. It will be the following  
20 witness.

21                   MS. BUSBEE: Can we -- can we discuss  
22 this testimony outside the presence of the witness and then  
23 hear the second one?

24                   THE COURT: Yes.

25                               (Witness out.)

1 MS. BUSBEE: Your Honor, I'm going to  
2 object to any conversations that -- any of these statements  
3 that the defendant made, because it's our position that he  
4 was in custody. The State has given me some cases about  
5 hostage situations where a person has taken control of a  
6 situation by threatening other people.

7 In this situation it sounds to me from  
8 the testimony and the Court has also heard the testimony in  
9 the Newbury case, which tracks this officer's testimony  
10 today, that at the time that they began discussing -- that  
11 they cut them off from the discussion of leaving the room in  
12 order, whether it was a legitimate law enforcement purpose  
13 or not, they did not give them the opportunity -- they were  
14 holding off the opportunity to have them come out and  
15 engaging them in question and answer.

16 For whatever purpose they were not  
17 Mirandized and I think that the case law is clear that they  
18 were in custody. I would like to draw the Court's attention  
19 to some state cases and then some federal cases. Our Court  
20 of Criminal Appeals has held in Miestis (phonetic) versus  
21 the State which is Texas Criminal Appeal case from 1999,  
22 that there are four factors important to this analysis,  
23 whether the suspect was informed of his right to remain  
24 silent, whether he was informed to remain silent prior to  
25 subsequent questioning, the length of time.

1 He wasn't warned at all, Your Honor.

2 And, moreover -- actually I misread that as far as that has  
3 to go to a subsequent thing.

4 The question is whether there was a form  
5 of restraint of freedom or movement and whether or not that  
6 person, a reasonable person under the same circumstances,  
7 would think that they were being restrained. I don't think  
8 that there is any doubt in this situation, that they knew  
9 very well that they were not free to leave. They were not  
10 given an opportunity.

11 So this is like a situation set up by the  
12 police to question them while they were waiting -- for  
13 whatever reason, these people were not apprized of the fact  
14 that they had the right not to discuss matters with the  
15 police.

16 And secondary to that, he stopped talking  
17 to the police officers. They didn't want to talk to them  
18 anymore. When the police reinitiated this conversation with  
19 him, it was based on something that an unknown third party  
20 had told them. They are required when a suspect has cut off  
21 communication and said they do not want to talk to the  
22 police anymore to question that person to establish beyond  
23 any question that that person wishes to reinitiate a  
24 conversation and that was not done in this case.

25 Thirdly, I would object to this as being

1 not relevant to the issue of guilt or innocence,  
2 particularly the business about watching a porn movie. And  
3 if relevant, I would say that its prejudicial nature far  
4 outweighs its probative value.

5 And would also object to anything that  
6 Mr. Newbury has said in this instance as being hearsay to  
7 this defendant. And would also point out to the Court that  
8 this has not been identified satisfactorily as Mr.  
9 Murphy's statements. There's no voice analysis, nothing  
10 other than this detective's opinion, who had never spoken to  
11 him before, that this was Mr. Murphy making these  
12 statements.

13 So while that's a laundry list of things,  
14 objections, I believe that that is -- makes the Court  
15 apprized of why we would hold -- or would request the Court  
16 hold that these statements should not be admitted into  
17 evidence in this portion of the trial.

18 THE COURT: Mr. Wirskey, if you would  
19 speak to the State's position on the relevance of the porn  
20 issue.

21 MR. WIRSKYE: Goes to show a state of  
22 mind, Your Honor. It shows no remorse on the part of these  
23 individuals, it shows their state of mind being surrounded  
24 by a group of police officers, and just the complete lack of  
25 worry on their part about a stand-off. Completely relevant.



1 Goes exactly to their state of mind, remorse on the offense,  
2 and their state of mind to the actual situation they were in  
3 at the time.

4 THE COURT: I'm trying to separate out  
5 these issues. The Court is very satisfied that the person  
6 making the statements was, in fact, Patrick Murphy. Not  
7 only did he identify himself by name, but also by history.  
8 For someone who has studied the file would be able to  
9 distinguish between the two individuals as to who was making  
10 the statement because of the detective's personal knowledge  
11 of the history of the defendant and the conversation between  
12 the two. He also spoke to the other suspect, Newbury, and  
13 was able to distinguish the declarants. So the issue of  
14 identification of the declarant is not a concern for the  
15 Court.

16 As far as custodial interrogation,  
17 certainly he was surrounded, certainly he was not free to  
18 go, but he was at that point not restrained, but he was  
19 certainly not free to go.

20 As far as custodial interrogation, the  
21 issue then becomes to the Court in my opinion was the  
22 communication initiated by the police officers designed to  
23 elicit an incriminating response. The bottom line was, they  
24 were attempting to have the individuals in the room  
25 surrender peaceably. The detective, he certainly didn't

1 question him about anything that happened in Irving. The  
2 only response that I heard testified here was, well, you got  
3 us, as far as an incriminating response. Well, yeah, that's  
4 a fairly true statement there. They got them.

5 What other incriminating response has  
6 been proffered by the State that you object to?

7 MS. BUSBEE: Well, of course, part of  
8 that is going to come in on the second part. But if all  
9 they have is -- what's the purpose of offering this, these  
10 statements, if -- okay, you got us. If you let that in, why  
11 are we allowing them to say the business about the porn  
12 movie? How is that relevant to guilt or innocence? A state  
13 of mind a month later is not relevant to a culpable mental  
14 state on Christmas Eve of 2000.

15 THE COURT: I tend to agree with you  
16 there. I don't see any relevance as far as a hostage or --  
17 not hostage, but as far as a stand-off and/or surrender  
18 negotiations. What they were doing prior to when the police  
19 officers announced their arrival is really not relevant to  
20 this issue.

21 MR. WIRSKYE: Judge, I believe the  
22 testimony was this was the second phone call and when they  
23 initiated the second phone call to suspect Murphy, the  
24 detective asked, what were you doing? Oh, we're just  
25 watching porn. This was after they knew they were

1 surrounded, after they knew law enforcement was there. And  
2 that's why one of the reasons we think it's so relevant.

3 THE COURT: That point was not  
4 sufficiently developed yet. Do you have another witness  
5 that you intend to call?

6 MR. SHOOK: Yes, sir.

7 THE COURT: Call your next witness.

8 MATT HARRELL,  
9 having been duly sworn, was examined and testified as  
10 follows:

11 DIRECT EXAMINATION

12 BY MR. SHOOK:

13 Q. Would you tell us your name, please.

14 A. Matt Harrell.

15 Q. And how are you employed, sir?

16 A. I'm a Sergeant with the Colorado Springs  
17 Police Department.

18 Q. And how long have you been with them?

19 A. Approximately 15 years.

20 Q. And what division are you assigned?

21 A. Currently I'm assigned to the Falcon Patrol  
22 Division.

23 Q. Let me turn your attention back to January of  
24 2001. What division were you assigned at that time?

25 A. I was assigned to the Colorado Springs

1 Fugitive Unit.

2 Q. And were you summoned to the Holiday Inn Hotel  
3 in Colorado Springs to assist in some negotiations?

4 A. Yes.

5 Q. Are you trained as a police negotiator?

6 A. Yes, I am.

7 Q. Approximately at what point in time did you  
8 begin contact with the individuals in that room?

9 A. It was approximately 10:20 p.m.

10 Q. Okay. And did you speak to them by phone?

11 A. Yes, I did.

12 Q. And did one of those individuals identify  
13 themselves as Patrick Murphy?

14 A. Yes, he did.

15 Q. During your talks with him, did Mr. Murphy  
16 bring up the Oshman's incident?

17 A. Yes, he did.

18 Q. And what did he tell you about the Oshman's  
19 incident?

20 A. He told me that he was in a truck with radio  
21 contact and an AR-15 set up to do damage from behind in a  
22 stand-off situation.

23 Q. Did he also tell you something about some  
24 people acting in a wrongful manner out there?

25 A. Yes.

1 Q. What did he say about that?

2 A. He said some people acted in a wrongful manner  
3 and a police officer lost his life.

4 Q. When he brought up that -- was that something  
5 you were interrogating him about or did he bring up the  
6 subject of Oshman's himself?

7 A. He brought it up.

8 Q. In fact, was that a subject you were trying to  
9 avoid?

10 A. At that point, definitely.

11 Q. And why was that?

12 A. Early in a negotiation, we're just bidding for  
13 time. We don't want to hit any hot button topics, anything  
14 that might set them off or -- until we know what their  
15 mindset is, we don't want to set them off.

16 MR. SHOOK: That's all we have, Judge.

17 CROSS-EXAMINATION

18 BY MS. BUSBEE:

19 Q. Okay. Detective Harrell, I just have a few  
20 questions. Do you know how long there had been phone  
21 contact with room 426 at the time that you took over?

22 A. At the time I took over, I didn't know exactly  
23 how long.

24 Q. And did you tape record the comments that you  
25 are talking about now or was that prior to the time the

1 tape-recording was set up?

2 A. That was prior to the tape-recording being set  
3 up.

4 Q. And those comments weren't made on the  
5 tape-recording?

6 A. No, they were not.

7 Q. Did he ever ask you for an attorney?

8 A. No, he did not.

9 Q. Did you ever tell him that he could have an  
10 attorney?

11 A. No, I did not.

12 Q. All right. And had you ever spoken with Mr.  
13 Murphy before?

14 A. No, I had not.

15 Q. Did you speak with him subsequent to that?

16 A. Since the negotiations that night?

17 Q. Yes.

18 A. No.

19 Q. Okay. So you're basing your testimony that it  
20 was his statement, basing that on the fact that the person  
21 said he was Patrick?

22 A. Correct.

23 Q. Okay. Tell me again how the business about  
24 Oshman's came up?

25 A. We were just talking. I was stalling for

1 time. He brought it up.

2 Q. Well, okay, in what way?

3 A. I can't remember the exact conversation that  
4 led up to it or what we were talking about.

5 Q. Were you taking notes?

6 A. Yes, I did.

7 Q. I don't believe I have ever seen those notes.  
8 I have a report. Did you --

9 A. My notes were --

10 Q. Reduced to a report?

11 A. Were reduced to a report.

12 Q. Okay. Fair enough.

13 THE COURT: When did you record your  
14 recollection of the conversation? That night? The next  
15 day?

16 THE WITNESS: The next day.

17 THE COURT: Did you get in on the first  
18 phone call that Detective Stinson had or did you come in on  
19 the second phone call Detective Stinson had?

20 THE WITNESS: I came in after the second  
21 phone call that Detective Stinson had.

22 THE COURT: I'm trying to understand the  
23 order of events. There was one phone call, disconnect. A  
24 second phone call, disconnect. And you were the third phone  
25 call?

1 THE WITNESS: Yes.

2 THE COURT: And did you make the phone  
3 call?

4 THE WITNESS: No, I did not.

5 THE COURT: Who placed the connection  
6 between the two rooms?

7 THE WITNESS: Special Agent Dan Bradley  
8 of the FBI.

9 THE COURT: So there was enough time to  
10 get the FBI into the loop?

11 THE WITNESS: Yes, it was. The FBI was  
12 already there because of the van being found.

13 THE COURT: How long in the -- how long  
14 after you realized who it was did your communication occur?

15 THE WITNESS: I believe Detective Stinson  
16 found them like around 9:00 at night and I started talking  
17 to them at approximately 10:20, so maybe an hour and 20  
18 minutes or so.

19 Q. (By Ms. Busbee) Did you ever talk to  
20 Mr. Newbury?

21 A. Yes, I did.

22 Q. Okay. Are you sure that it was Patrick Murphy  
23 who told you this stuff about -- or was it Donald Newbury?  
24 This is before you were taping?

25 A. It was the person that told me their name was



1 Patrick that told me the information about being in a truck.

2 THE COURT: Did you ever have any  
3 conversation with either of the two individuals as to what  
4 they were doing after the police initiated contact with them  
5 in the room?

6 THE WITNESS: There was some talk about  
7 that, yes.

8 THE COURT: And their response?

9 THE WITNESS: They were watching TV for  
10 the most part. Um, I can't really, really think of what  
11 else in particular they said they were doing. They kept  
12 mentioning the weapons they had and later I got information  
13 that they could hear what sounded like shotguns being racked  
14 or something to that effect during the negotiations.

15 THE COURT: That's because you were in  
16 the adjacent room?

17 THE WITNESS: I wasn't. By the time I  
18 got involved, I was in a conference room set up away from  
19 the location at a safe distance. But the SWAT Team was  
20 probably still in the adjacent rooms or somewhere real  
21 close.

22 MS. BUSBEE: What are you offering, just  
23 what he has said as to what Murphy said, not what he's been  
24 asked about other things the Judge is asking for?

25 MR. SHOOK: No. Right now all the

1 comments that I elicited.

2 THE COURT: I'm just trying to put it all  
3 in context, so I can make the proper ruling.

4 MS. BUSBEE: Right. I just wanted to  
5 know what I would be objecting to. I'm ready to argue that  
6 now.

7 THE COURT: Detective, please wait for us  
8 outside.

9 [Witness out.]

10 MS. BUSBEE: Your Honor, if I may,  
11 instead of going through that laundry list again, ask the  
12 Court to remember the objection that I had on the previous  
13 witness.

14 This witness has no independent knowledge  
15 that who he was speaking to was Mr. Murphy. And I would  
16 renew, much more fervently, my objection to anything he has  
17 to say as related to Mr. Murphy because he can't say for a  
18 positive fact that what he is saying Patrick Murphy said was  
19 said by the man who is sitting here on trial today.

20 But I believe, if anything, this  
21 officer's testimony further strengthens my argument that  
22 this was a questioning situation. He says, I asked him  
23 questions, I asked him questions, in order to stall. It  
24 seems fundamentally unfair to surround a man's room with a  
25 SWAT Team, let them know that there's a SWAT Team there, and

1 continue to engage them in dialog until they are ready to  
2 ask them to come out.

3 And I think that that goes to the heart  
4 of what the Supreme Court is concerned about in Miranda.  
5 They were not warned that these statements could be used  
6 against them and they were in, most definitely, a situation  
7 where they knew they were not free to leave.

8 And I would ask the Court to suppress any  
9 statement that he made to Mr. Harrell and any statement that  
10 he made to Detective Stinson. I would urge that objection  
11 based on the new testimony that the Court has heard from  
12 this witness.

13 THE COURT: Previous issues that I have  
14 already listed with the first detective still apply. The  
15 issue on whether or not they can testify they were watching  
16 porn, you have got two conflicting statements here. He told  
17 one officer that they had been watching porn or were  
18 watching porn and he tells this officer here that he's  
19 watching TV. I think that --

20 MR. SHOOK: Not conflicting, Judge. This  
21 is later on in the night.

22 MS. BUSBEE: I would acknowledge that,  
23 that they told different things to different officers.

24 THE COURT: They told different things to  
25 different people and I think it just all goes to the jury

1 has a right to weigh the evidence. If it's before or during  
2 and they can weigh the evidence, bottom line.

3 I don't find this to be previously  
4 custodial interrogation was not intended or calculated to  
5 elicit an incriminating response. Obviously, in a stand-off  
6 situation, the police need time to -- if they want to stall  
7 until they can get their people in place, which is logical  
8 and ended in a safe resolution to this matter.

9 Depending on how the State asks the  
10 question with the first detective as to whether they were  
11 watching porn, I may still sustain that objection, depending  
12 on how it's set up. Everything else is coming in.

13 MS. BUSBEE: Then just to get this on the  
14 record as far as findings of fact. Is the Court's ruling  
15 that this is relevant and you are overruling my objection  
16 it's unduly prejudicial?

17 THE COURT: Yes. I have made a 403, 404  
18 balancing test and found it's relevant. It goes to the  
19 state of mind of the defendants in this matter and the jury  
20 may weigh the declarant's testimony.

21 MS. BUSBEE: Your Honor, secondarily,  
22 these things that Mr. Newbury said as to comments about  
23 America's Most Wanted host and some other derogatory  
24 comments that he made, we're objecting to that as hearsay.  
25 There's not any evidence that the defendant was present when

1 he made these statements. They can't possibly be relevant  
2 on the issue of guilt or innocence as far as the defendant  
3 is concerned.

4 THE COURT: I agree. There's enough in  
5 here for the jury to worry about with just Mr. Murphy's  
6 statements. I understand the State's position  
7 co-conspirator and everything else. You have got enough.  
8 That's all there is. It's going to come in. Sorry to cut  
9 your arguments off, but stick with Mr. Murphy. Bring in the  
10 jury.

11 [Jury in]

12 THE COURT: Thank you. You may be  
13 seated. Mr. Shook?

14 JIM STINSON,  
15 having been duly sworn, was examined and testified as  
16 follows:

17 DIRECT EXAMINATION CONTINUED

18 BY MR. SHOOK:

19 Q. Detective Stinson, I believe we left off where  
20 you were going to make contact with the person in that room;  
21 is that correct?

22 A. Yes, sir.

23 Q. And, again, how did you make contact with  
24 them?

25 A. Through a telephone.

1 Q. Okay. Once you connected with that person,  
2 did you identify yourself?

3 A. Yes, I did.

4 Q. And what did you tell him?

5 A. I told him my name was Detective Jim Stinson  
6 with the Colorado Springs Police Department and I advised  
7 him that I was -- first of all, let me backtrack.

8 The gentleman -- when the phone rang, the  
9 gentleman said hello. And giving that person the benefit of  
10 the doubt, I said, "Andres"? And there was a slight pause  
11 and he responded, "Um, yeah." And I identified myself. I  
12 said I was Jim Stinson with the Colorado Springs Police  
13 Department. I advised him that I was with a part of  
14 detectives that were out looking for the remaining two of  
15 these Texas fugitives and that what we needed to do is --  
16 that we had gathered information, thinking that they may be  
17 in this room. I said, the room is surrounded. All we  
18 needed him to do is come out with his hands up. We would  
19 identify him. And once we found out he wasn't one of the  
20 fugitives, we would let him go on his way.

21 Q. What was his response to you?

22 A. He said, quote, "Well, Detective, you found  
23 us," end quote.

24 Q. Then what was said?

25 A. I was just, you know, right now I'm not a

1 trained negotiator, so I'm stalling for time. Like I said  
2 earlier, the wing was completely occupied with the exception  
3 of the room that we were in, right next door to their room.  
4 So I started stalling for time to try to give us the  
5 opportunity to get the wing vacated.

6 So we just began talking. I wanted to  
7 find out who I was talking to. I said, "Who is this"? And  
8 he said it was Patrick. I knew that to be Patrick Murphy.  
9 With the information that we had been given about these two  
10 guys, I knew that he was from Texas. I'm from Austin. He's  
11 from Rockdale. And so I know a little bit about Rockdale,  
12 so I got him to talking about that.

13 Q. Okay. Now, you are in, actually, the room  
14 right next door; is that right?

15 A. Yes, sir.

16 Q. And did you know where his telephone would be  
17 located?

18 A. Yes. These rooms are set up mirror opposites.  
19 So the wall that separated our rooms, the telephones were  
20 just on the other side of the wall. So if he's standing  
21 there at the telephone, we're about three feet from each  
22 other with a wall separating us.

23 Q. And did that make you a little nervous for  
24 your own personal sake?

25 A. Sure.

1 Q. Those walls aren't that thick?

2 A. That's correct. They're just sheetrock.

3 Q. What did you do? Did you take any precautions  
4 for your safety?

5 A. Well, once he identified himself as being one  
6 of the two we were looking for, I was sitting on the bed.  
7 Then I got down and tried to made myself as small as  
8 possible. I'm, you know, crouched down on the floor. And  
9 at the same time I'm trying to contact through hand signals,  
10 not giving away any sound, with the sergeant at the door,  
11 because he doesn't know who I'm talking to and I'm trying to  
12 let him know that I'm talking to the guys we're looking for.

13 Sometime during my conversation Sergeant  
14 Lofgren took a ballistic shield and placed it between me and  
15 the wall and I was too intent on what I was doing. I don't  
16 know at what time he did that.

17 Q. Did Mr. Murphy ask you or did he inquire about  
18 you on how you had been able to locate him?

19 A. Yes. He wanted to know how we had found them.

20 Q. Okay. And what did you tell him?

21 A. I just told him we had received information  
22 through police work. I didn't want to give up, you know,  
23 how we knew.

24 Q. Did he make any other requests to you, of you,  
25 concerning the telephone?



1           A.       Um, I had asked him -- or he had asked me if I  
2       could turn his phone into a speakerphone. And I played it  
3       off that I didn't know what kind of phone he was on and I  
4       didn't know anything about his phone, so I don't know how to  
5       do that. And so I told him, no, I couldn't do it.

6           Q.       Okay. Then what happened?

7           A.       Well, he -- I tried to change the subject  
8       again, but then he came back to make it -- he wanted it a  
9       speaker phone. He seemed to be a little agitated. I asked  
10      him, "Why do you need a speakerphone anyway?" And he said  
11      that he needed to keep his hands free.

12          Q.       Did that worry you some at that time?

13          A.       Sure. When we're looking at a suspect, what  
14      can hurt us are the hands. They're the ones that can use a  
15      gun or hit us. So somebody needing their hands free makes  
16      me think that something is going to happen to me.

17          Q.       Then what happened?

18          A.       After I told him I couldn't -- I didn't have  
19      the technology to change his phone into a speaker phone, he  
20      just told me he didn't want to talk to me anymore and he  
21      hung up.

22          Q.       Were you able to establish contact again with  
23      him?

24          A.       Yes. While I was speaking with him on the  
25      phone, Sergeant Lofgren and my partner, Detective Todd

1 Drennan, were starting to make arrangements to get the wing  
2 evacuated. Detective Drennan had gotten a lady in room, I  
3 believe it was 416, which is cattycornered to the room I was  
4 in, got her out through a sliding glass door, so we had  
5 access to her room.

6 So after I got off the phone, I got all  
7 my stuff and went over to that room. So now I'm across the  
8 hall a little bit down the hall. I had called the front  
9 desk to let them know that we had changed rooms in case  
10 anybody from the police station was going to call in. And  
11 at that time they told me that the people in 426 had  
12 contacted them and wanted to talk on the phone again.

13 Q. How much time had passed to that point in  
14 time?

15 A. Maybe two minutes between leaving 422 and  
16 getting over and starting the phone call again. It was  
17 about two minutes.

18 Q. And were you able to establish contact again?

19 A. Yes, I was.

20 Q. And who were you talking with at that point?

21 A. I rang the phone again and it was picked up  
22 and it was Patrick Murphy again.

23 Q. Okay. And did you ask him a question at that  
24 time?

25 A. Yes. I just said, "What are you doing?"

1 What's going on?"

2 Q. What are you doing? What's going on?

3 A. Words to that effect, yeah.

4 Q. What was his response?

5 MR. SANCHEZ: Your Honor, at this time we  
6 would reurge our prior objections as stated to the Court.

7 THE COURT: Overruled.

8 A. At this time he said, "We're watching porn."

9 Q. (By Mr. Shook) "We're watching porn"?

10 A. Yes, sir.

11 Q. Then what did you talk to him about?

12 A. I asked him, you know, what was his plan, you  
13 know, what is going to happen? Are they going to come out?  
14 And at this time he told me, "Here, I'll let you talk to my  
15 partner."

16 Q. Now, you stated before, you are not a trained  
17 negotiator; is that right?

18 A. That's correct.

19 Q. Did a negotiator with the Colorado Springs  
20 Police Department eventually arrive there?

21 A. Well, I spoke with Mr. Newbury for a short  
22 time and as I was doing that, the evacuation process was  
23 continuing. But a command post was being set up in a  
24 conference room on the other side of the hotel. After I got  
25 off the phone with Mr. Newbury, I went over to the command

1 post and that's where I met with Detective Matt Harrell who  
2 eventually conducted the negotiations and he is a trained  
3 negotiator.

4 Q. You stayed there throughout the whole  
5 stand-off process?

6 A. For most of it. At one point I left because  
7 it was thought that I was going to have to do a search  
8 warrant, so I went down to headquarters and that changed and  
9 I came back. So I was probably gone for maybe 30 minutes.

10 Q. After Mr. Murphy and Mr. Newbury were taken  
11 into custody, did you escort Mr. Murphy out to a police  
12 vehicle?

13 A. Yes, sir, I did.

14 Q. And did you have an opportunity to speak to  
15 him at that time?

16 A. Yes.

17 Q. And was it the same voice you had heard  
18 talking earlier over the phone?

19 A. Yes, sir.

20 MR. SHOOK: We'll pass the witness.

21 CROSS-EXAMINATION

22 BY MR. SANCHEZ:

23 Q. Officer, did you -- were you able to establish  
24 when Mr. Murphy and Mr. Newbury actually checked into that  
25 room?

1           A.       It was -- I had spoke with a lady who checked  
2       them in, Ms. Christianson, and she thought it was around  
3       7:00 or 8:00 on the 22nd, Monday the 22nd of January.

4           Q.       So they had been there for about a day?

5           A.       Yes, sir, a little over a day.

6           Q.       And your job was to get there, secure the  
7       place, and start negotiations with whoever was in that room?

8           A.       No. My job was to answer the tip to see if  
9       there was any validity to it. And once Detective Drennan  
10      and I had done that and felt there was some potential there,  
11      for our safety we contacted the SWAT Team.

12          Q.       And you were the first law enforcement  
13      official to actually have contact with Mr. Murphy --

14          A.       Yes, sir.

15          Q.       -- at that hotel that evening?

16          A.       Yes, sir.

17          Q.       And at some point you stopped doing that,  
18      talking to Mr. Murphy, and handed over your duties to, I  
19      guess, Detective Matt Harrell?

20          A.       Yes, sir.

21          Q.       And are you with the same law enforcement  
22      agency as him?

23          A.       Yes.

24          Q.       And eventually Mr. Murphy gave himself up; is  
25      that true?

1 A. Yes, sir.

2 Q. It was done peacefully?

3 A. Yes.

4 Q. As far as your understanding was, that was  
5 what they wanted, correct, a peaceful --

6 A. Um, you know, I don't know what they wanted.  
7 I mean, it was -- they were arrested peacefully is about the  
8 best I can say.

9 Q. Were you present when Mr. Murphy actually came  
10 out to the hall?

11 A. No, I was not.

12 MR. SANCHEZ: I pass the witness.

13 MR. SHOOK: That's all we have, Judge.

14 THE COURT: Thank you, Detective.

15 MR. SHOOK: May this witness be excused?

16 MR. SANCHEZ: No objection, Your Honor.

17 THE COURT: He may.

18 MR. SHOOK: Call Sergeant Harrell. May I  
19 recall Detective Stinson?

20 THE COURT: Yes.

21 REDIRECT EXAMINATION

22 BY MR. SHOOK:

23 Q. Detective Stinson, when you were following up  
24 leads that day, had you, in fact, confirmed or had officers  
25 confirm that there were warrants out of the state of Texas

1 for Mr. Murphy?

2 A. Yes, sir.

3 Q. Warrants for escape, as well as capital murder  
4 warrants?

5 A. Yes, sir.

6 Q. And federal warrants?

7 A. Yes -- well, I'm not sure about the federal  
8 warrants, but the capital murder of the police officer and  
9 the escape, yes.

10 Q. And you confirmed those?

11 A. Yes.

12 MR. SHOOK: That's all we have.

13 MR. SANCHEZ: I have nothing further,  
14 Your Honor.

15 MR. SHOOK: We'll call Matt Harrell.

16 THE COURT: Let the record reflect this  
17 witness has been previously sworn.

18 MATT HARRELL,  
19 having been duly sworn, was examined and testified as  
20 follows:

21 DIRECT EXAMINATION

22 BY MR. SHOOK:

23 Q. Would you tell us your name, please.

24 A. Matt Harrell.

25 Q. And could you spell your last name for the

1 Court Reporter?

2 A. H-A-R-R-E-L-L.

3 Q. How are you employed, sir?

4 A. I'm a Sergeant with the Colorado Springs  
5 Police Department.

6 Q. And what division are you assigned?

7 A. I'm assigned to a Falcon Division Patrol.

8 Q. Let me turn your attention back to January of  
9 2001 and ask what division you were assigned at that time?

10 A. I was assigned to the Colorado Springs Police  
11 Department Fugitive Unit.

12 Q. Have you also been trained as a police  
13 negotiator?

14 A. Yes.

15 Q. And how long have you served in that capacity?

16 A. Approximately ten years.

17 Q. Let me turn your attention to the 23rd of  
18 January, 2001. Were you asked or were you one of the group  
19 of detectives that were following up leads about the  
20 fugitives from Texas?

21 A. Yes, I was.

22 Q. The evening of the 23rd, were you asked to go  
23 to a Holiday Inn there in Colorado Springs?

24 A. Yes.

25 Q. And what was the purpose of you going to that



1 location?

2 A. I was to be the negotiator to negotiate with  
3 the last two of the Texas Seven that were holed up in one of  
4 the rooms at the hotel.

5 Q. And what area of the hotel did you go to?

6 A. I went to one of the conference room areas.  
7 It was called the Regency Conference Room.

8 Q. Were you able to establish phone contact with  
9 the individuals in the room?

10 A. Yes, I was.

11 Q. Approximately what time did that take place?

12 A. Approximately 10:20 p.m.

13 Q. And did you speak to a man who identified  
14 himself as Patrick?

15 A. Yes, I did.

16 Q. Did you understand him to be Patrick Murphy?

17 A. Yes.

18 Q. During the course of that conversation, did  
19 Mr. Murphy bring up the Oshman's incident?

20 A. Yes, he did.

21 Q. Was that any information that you were trying  
22 to elicit or something he was bringing up on his own?

23 A. No. He brought it up on his own.

24 Q. What information did he give you regarding the  
25 incident in Oshman's?

1           A.       He stated that he was in a truck with radio  
2 contact, with an AR-15, and he was set up to do damage from  
3 behind in a stand-off situation.

4           Q.       Did he also talk to you about whether some  
5 people had acted in a wrongful manner?

6           A.       Yes, he did.

7           Q.       What did he say about that?

8           A.       He said that during the Oshman's some people  
9 acted in a wrongful manner and a police officer lost his  
10 life.

11          Q.       And I take it negotiations continued for some  
12 time to the early morning hours?

13          A.       Yes.

14          Q.       You weren't one of the officers that actually  
15 took Mr. Murphy or Mr. Newbury into custody, were you?

16          A.       No, I was not.

17                   MR. SHOOK: We'll pass the witness, Your  
18 Honor.

19                   CROSS-EXAMINATION

20           BY MR. SANCHEZ:

21          Q.       Officer Harrell, before testifying today did  
22 you have an opportunity to look at your report that you  
23 wrote in this case?

24          A.       Yes, I did.

25          Q.       You had testified that Mr. Murphy told you

1 that some people had acted in a wrongful manner and that an  
2 officer had lost his life. Isn't it true that prior to him  
3 telling you that, he told you that he wouldn't have done the  
4 Oshman's; isn't that correct?

5 A. That's correct.

6 Q. So that prior to him giving you that statement  
7 about some people acting wrongfully, he had told you that he  
8 wouldn't have done the Oshman's. And then he said some  
9 people acted in a wrongful manner and an officer lost his  
10 life?

11 A. That's correct.

12 Q. Again, you weren't present when Mr. Murphy  
13 surrendered to the law enforcement officials there at the  
14 hotel, correct?

15 A. I was at the hotel, but I wasn't in the area  
16 where he surrendered.

17 Q. You weren't in the hallway?

18 A. No, I was not.

19 MR. SANCHEZ: That's all I have for now,  
20 Your Honor.

21 MR. SHOOK: May the witness be excused?

22 THE COURT: He may.

23 MS. BUSBEE: Your Honor, we would like to  
24 have him subject to recall.

25 THE COURT: Yes. Detective, you are

1 subject to recall.

2 THE WITNESS: Yes, Your Honor.

3 MR. WIRSKYE: State would call Officer  
4 Ford.

5 JOHN FORD,

6 having been duly sworn, was examined and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. WIRSKYE:

10 Q. Officer, can you tell us your full name.

11 A. John Ford.

12 Q. And how are you employed, sir?

13 A. By the City of Colorado Springs as a police  
14 officer.

15 Q. How long have you been a police officer in  
16 Colorado Springs?

17 A. This is my 13th year.

18 Q. Are you currently assigned to your SWAT Team  
19 or Tactical Team?

20 A. Yes, I am.

21 Q. How long have you been on that team?

22 A. I've been on the team approximately nine  
23 years.

24 Q. And kind of describe the team for us, how many  
25 people are in it, what type of training y'all do, that sort

1 of thing.

2 A. The team then had original team members of  
3 ten, which included our supervisor, our sergeant, and we had  
4 a supplemented team called our SRT team, which consists of  
5 our canine intermixed with approximately another ten, so we  
6 can beef up our tactical squad to about 20 or 21 people, if  
7 necessary.

8 Q. How often do, I guess, the original or the ten  
9 that do it full time, how often do y'all train?

10 A. We train once a week.

11 Q. And do you have any particular  
12 responsibilities on the team?

13 A. I am considered the team leader and that  
14 really mainly comprises of when my supervisor, my sergeant,  
15 is out of town on vacation, I am in charge of any -- as  
16 acting sergeant of any critical incident that would occur.

17 Q. Directing your attention back to January of  
18 2001, your tactical sergeant at that time was Sergeant  
19 Lofgren; is that correct?

20 A. Yes, sir.

21 Q. Specifically going to that Tuesday, January  
22 23rd of 2001, did y'all get called out to help assist in  
23 maybe a possible apprehension of the Texas Seven suspects?

24 A. Yes, we did. We got paged out to come to what  
25 would be the Hungry Farmer slash Quality Inn. It was a

1 hotel and restaurant right there. And right next to it was  
2 a Quality Inn, a hotel, which the pager read, gave both  
3 locations. And it was stated that the van that was used by  
4 the 'Texas Seven was located in that area.

5 Q. So once you found out that the suspects' van  
6 was located in your city, did y'all create a police command  
7 center?

8 A. Yes, we did.

9 Q. And you had officers from different agencies,  
10 state and federal, helping process tips; is that right?

11 A. Yes, sir.

12 Q. That day, that Tuesday, did your team get  
13 called out on a number of other leads?

14 A. Once we got done with the Quality Inn where  
15 the van was, we basically as a team stayed at our police  
16 operation center. And they had different officers and  
17 different detectives follow up various leads. We were on  
18 standby in case one of the leads that came in was a really  
19 hot tip where we would deploy from the police operations  
20 center.

21 Q. And, I guess, about 8:00 that night, you got a  
22 hot tip about the Holiday Inn; is that right?

23 A. Yes, sir.

24 Q. And your team went to that location?

25 A. Yes, we did.

1 Q. How does your team dress or how are y'all  
2 outfitted?

3 A. Our Tactical Team consists of black BDUs and  
4 we also have a black TACT vest with a black helmet with  
5 police markings on the helmet and the vest.

6 Q. What type of arms do y'all carry?

7 A. Anywhere between an MP-5 and an AR-15.

8 Q. What is an MP-5?

9 A. It's just a German made weapon. It's a weapon  
10 that shoots a 9 millimeter round, the same round that our  
11 handgun uses, consisting of you have a single fire, I think,  
12 to fully automatic.

13 Q. What type of weapon did you have that evening?

14 A. I had an MP-5.

15 Q. Once you got to the Holiday Inn, what  
16 happened?

17 A. Once we got there, Sergeant Lofgren met with  
18 Detective Stinson and Drennan to get further information on  
19 the actual situation there. There was a room there, I  
20 believe is 426 that they thought a member of the Texas Seven  
21 or suspicious parties had checked in and that was actually  
22 the hot lead that came from that area.

23 Q. And once you found out that information, did  
24 your team come up with an initial plan to make a perimeter?

25 A. Yes, sir. Sergeant Lofgren, we had our team

1 divided into basically what we call a crisis entry team,  
2 which is a team that is usually on the inside. And then we  
3 have a containment team.

4 The plan was that we would actually take  
5 one of our tactical vehicles and drive through the parking  
6 lot and drop our containment team, outside containment team,  
7 in the various positions. And once that was done, the  
8 crisis entry team would make entry into the hotel and find  
9 the best stationing place there.

10 Q. Why was it important that y'all set up that  
11 perimeter?

12 A. The perimeter needed to be set up quickly,  
13 just because if it was a member of the Texas Seven that they  
14 could not get back into the community, that we had it  
15 basically locked down from the outside in.

16 Q. And y'all were able to set up that perimeter?

17 A. Yes, sir.

18 Q. And you yourself were on the crisis entry  
19 team; is that right?

20 A. Yes, sir.

21 Q. What did you do after the perimeter was  
22 secured?

23 A. Once we knew that the outside perimeter was  
24 secured, we went in and got our best vantage point in the  
25 hallway where the target location was. At that point



1 Sergeant Lofgren directed the team to go up to 426,  
2 protected by a shield, what we called a shield movement,  
3 where we have a ballistic shield and tactical officers  
4 approach whatever threat area there is.

5 We went up to 426 and Officer Stephens  
6 was instructed by Sergeant Lofgren to put a piece of  
7 electrical tape over the peephole. Once that was done,  
8 Officer Stephens knocked approximately three times on the  
9 door to see if there was a response that would be given and  
10 there was none.

11 Q. Did y'all hear anything at that point coming  
12 from inside the room?

13 A. We could hear the TV.

14 Q. How many people actually approached the door  
15 initially?

16 A. Five.

17 Q. And was everybody protected behind that  
18 ballistic shield?

19 A. As best we could, yes.

20 Q. How big are those shields?

21 A. It's probably about 3 feet by 6 feet.

22 Q. Once you found out that, I guess, no one was  
23 going to answer the door, what did y'all do?

24 A. We were instructed to back off. Sergeant  
25 Lofgren had a master key to the rooms in that area. We

1 backed off to room 422 and basically took a foothold in room  
2 422.

3 Q. And that was the unoccupied room?

4 A. Yes, sir.

5 Q. What happened once y'all got into 422?

6 A. Basically what happened once we were in 422,  
7 is Sergeant Lofgren, along with Detective Stinson and  
8 Detective Drennan were constantly getting fed information  
9 from our command post from the front desk of the hotel.  
10 Myself and the other tactical officers were taking various  
11 positions -- were rotating --

12 THE COURT: Sir, you are going to have to  
13 slow down. She's typing word for word. I can't even keep  
14 up with a summary.

15 A. Myself and the other tactical officers, to not  
16 include Sergeant Lofgren, rotated to the front door at  
17 various times to keep an eye out to make sure no one came  
18 out of that room or any other various rooms that we felt  
19 were unsafe areas.

20 Q. So once y'all initially tried to knock on the  
21 door, somebody always had eyes on the door of 426?

22 A. Yes. It wasn't us. We had another  
23 containment team on the other end of the hall who could  
24 actually see the door. The way we were, we were set, but we  
25 were able to communicate with the other containment team.

1 If that door did open, we were able to be there right away  
2 for any necessary incident.

3 Q. You were in 422, which is right next door to  
4 426?

5 A. Yes.

6 Q. I guess Detective Stinson is on the phone and  
7 at some point gives you guys the high sign that, hey, you  
8 got your two guys, the two members of the Texas Seven; is  
9 that correct?

10 A. Yes. As I recall, basically his statement  
11 was, "It's them."

12 Q. And once y'all find out that from your  
13 tactical perspective, what happens?

14 A. Once that we were informed of that, we  
15 immediately felt that we were too close to the room.  
16 Sergeant Lofgren instructed us to back off down to room, I  
17 believe, it was 416 and 418.

18 Q. Why were you concerned that you were too close  
19 to the room?

20 A. Because, basically, there was just a wall  
21 between us of sheetrock.

22 Q. The sheetrock wouldn't stop bullets?

23 A. No, sir.

24 Q. Once y'all backed off, did you call in more  
25 resources?

1 A. Yes, we did.

2 Q. Who did you call in?

3 A. Sergeant Lofgren asked for what we call the  
4 SRT Team, Special Response Team, which is just supplemental  
5 tactical officers who are trained in statistical situations,  
6 not as extensively as we are, but they are there to  
7 supplement us. And he also called our canine team in.

8 Q. At that point you had at least 20 tactically  
9 trained officers surrounding that room?

10 A. Yes.

11 Q. Why did you call the canine team in?

12 A. We called the canine team in for various  
13 reasons, any tactical situation, in case for some reason  
14 suspects -- or suspects would break the perimeter, it's  
15 easier to track. We also used that as a deterrent. A lot  
16 of suspects, when they hear the dog or see the dog, they'll  
17 comply even faster.

18 Q. Did you also call in a medical team?

19 A. Yes, we did.

20 Q. What medical team was called in?

21 A. Our fire department has what we call tactical  
22 medical team that deploys with us on any critical incident  
23 or any warrant that we serve. They have a team that deploys  
24 that trains with us and we brought them in to bring them in  
25 case someone were to be hurt.

1 Q. And did y'all manage to evacuate that 400 wing  
2 or block of rooms in the hotel?

3 A. Yes, we did.

4 Q. I guess you stayed in position or stayed there  
5 as the negotiations went on; is that right?

6 A. Yes, we did.

7 Q. Where did you stay during the majority of the  
8 negotiations?

9 A. Basically, I was right with the other team  
10 members, right between room 416 and 418. We had a couple of  
11 shields that were set up, basically offset, from the doorway  
12 of 416, I believe, into the hallway.

13 Q. During the time that you were set up out  
14 there, did you hear any noises coming from the rooms?

15 A. Yes, I did.

16 Q. Could you describe what you heard coming from  
17 the room for the members of the jury?

18 A. At one point I heard what I thought was a  
19 shotgun being racked at least twice. And shortly after that  
20 I heard what I thought was bullets hitting the ground.

21 Q. When you say bullets hitting the ground, you  
22 mean fired bullets or bullets that had been dropped?

23 A. Bullets that had been dropped like knocked  
24 over or something.

25 Q. When you heard that shotgun racked, what went

1 through your mind?

2 A. Basically, we were thinking -- once we heard  
3 it, we got to the point where they were saying, okay, they  
4 are not going to -- the individuals are not going to come  
5 out peacefully. That's what my initial thought was and the  
6 other team members probably.

7 Q. As the morning drug on and negotiations went  
8 on, about 2:30 a.m. in the morning, was a plan made for the  
9 two individuals to come out and give themselves up?

10 A. Yes. They had talked to Eric Singer from our  
11 news channel and they would develop a plan where once they  
12 had their interviews on TV, that they were to come out  
13 peacefully.

14 Q. After they gave their interviews, did they, in  
15 fact, come out?

16 A. Yes, they did.

17 Q. Did y'all have a plan in place for them to get  
18 out of that room?

19 A. Yes, we did.

20 Q. Tell us the plan.

21 A. The initial plan was that they were to come  
22 out one by one with their shirts off. By having their  
23 shirts off, we would be able to see if they had any weapons,  
24 basically, in their waistbands or in their upper part of  
25 their body. They were to come out, again, one by one. And

1 once they got into the hallway, then they were instructed to  
2 take orders from -- which would be from Sergeant Lofgren who  
3 would give the verbals, as far as backing them up to us for  
4 us to take them into custody.

5 Q. Did they, in fact, come out one by one?

6 A. No, they did not.

7 Q. Describe how it was that they came out of the  
8 room.

9 A. They both came out together and they were  
10 holding hands, their inner hands were locked, hands were up,  
11 and they did have no shirts on.

12 Q. The fact that they came out together, holding  
13 hands, was that something that y'all had commanded them to  
14 do from a tactical sense or why did that come about?

15 A. That was a plan they made up themselves. As  
16 from a tactical aspect of it, that was not information given  
17 from us.

18 Q. You would rather have them come out one by  
19 one?

20 A. Yes, we would.

21 Q. But it was their demand to come out at the  
22 same time, holding hands?

23 A. Yes.

24 Q. Were the hands up or down?

25 A. They were up.

1 Q. Once they came out of the room with their  
2 hands up, what happened?

3 A. Sergeant Lofgren instructed them to back  
4 toward us, which they did, at one point I would say probably  
5 approximately five feet. They were instructed to kneel down  
6 and let go of hands, which they did. Sergeant Lofgren gave  
7 one of the individuals -- to one of the individuals on the  
8 left side, who I believe was Newbury, to back up, at which  
9 time we had two officers as an arrest team and they were  
10 strictly there to put hands on. And once that order was  
11 given, they took that individual into custody. They secured  
12 him in a room. They took the other individual into custody  
13 and secured him in the same room.

14 Q. So the second individual was the person you  
15 later came to know as Patrick Murphy, Jr.?

16 A. Yes, sir.

17 Q. When they came out of the room, approximately  
18 how many weapons were trained or aimed at them?

19 A. From our end there were at least five. From  
20 the other end when they initially came out of the room, I  
21 believe there was three.

22 Q. Something you describe as overwhelming fire  
23 power?

24 A. As best we could, yes.

25 Q. If they hadn't complied with your commands,



1 what is your team prepared to do?

2 A. We were prepared to take lethal action, if  
3 necessary.

4 Q. When you got a chance to see Mr. Murphy come  
5 out of the room, could you describe just in general terms  
6 for the members of the jury what he looked like?

7 A. Basically, I just saw his back. His hair was  
8 dyed and we were informed of that kind of before they came  
9 out. But basically I just saw the back of them.

10 Q. Never got a good look at his face?

11 A. No, I did not.

12 Q. After these two were taken into custody, what  
13 did your team do next?

14 A. At that point once we knew they were secure  
15 with our officers, we approached the room 426 with our  
16 canine officer, who cast a dog into the room. Once the  
17 canine did not hit on anything in the room, we actually made  
18 entry into the room to clear it to make sure there were no  
19 other individuals inside that room.

20 Q. So you sent the dog in to see if there was  
21 another person?

22 A. Yes.

23 Q. Once you determined no one else was in there,  
24 y'all went in to secure it?

25 A. Yes, we did.

1 Q. Did you find any weapons?

2 A. There were several weapons.

3 Q. When you say several, about how many? Not to  
4 be exact.

5 A. I would say 10 to 12 or so.

6 Q. And at that point does that end your  
7 responsibility and your Tactical Team?

8 A. Actually, my responsibilities, I went in. I  
9 immediately went to the left, which was to the bathroom  
10 area. The other team flowed in through the main area of the  
11 bedroom. Once we found that there were no individuals, we  
12 were instructed immediately to exit the room and turn it  
13 over to the detectives.

14 Q. Okay. You didn't do -- you or your team  
15 didn't do the thorough, complete search of everything in  
16 that room?

17 A. No, we did not.

18 MR. SHOOK: I'll pass the witness, Your  
19 Honor.

20 CROSS-EXAMINATION

21 BY MR. SANCHEZ:

22 Q. Officer, when they came out to the hallway,  
23 they weren't armed, were they?

24 A. No, they were not.

25 Q. Did you approach them personally?

1 A. No, I did not.

2 Q. Can you see somebody approach them personally?

3 A. Once they backed up to us, we did have two  
4 officers who approached them personally.

5 Q. And they patted them down?

6 A. Yes.

7 Q. And there were no weapons on them?

8 A. No, there were not.

9 Q. And other than coming out holding hands  
10 together, they followed your directions, correct?

11 A. Yes, they did.

12 Q. And you said there were some weapons inside.  
13 Did you see them yourself?

14 A. Yes, I did.

15 Q. You weren't the one who retrieved them or  
16 anything like that?

17 A. No, I was not.

18 MR. SANCHEZ: I pass the witness.

19 MR. WIRSKYE: I have nothing further,  
20 Your Honor.

21 THE COURT: Thank you, Officer.

22 MR. WIRSKYE: May this witness be  
23 excused?

24 MR. SANCHEZ: No objection.

25 THE COURT: He may.

1 MR. SHOOK: We'll call Special Agent  
2 DiRito.

3 STEPHEN DIRITO,  
4 having been duly sworn, was examined and testified as  
5 follows:

6 DIRECT EXAMINATION

7 BY MR. SHOOK:

8 Q. Would you tell us your name, please.

9 A. My name is Stephen W. DiRito.

10 Q. And how are you employed, sir?

11 A. I'm a Special Agent with the Federal Bureau of  
12 Investigation, the FBI.

13 Q. How long have you been with the FBI?

14 A. I've been with the FBI for seven years.

15 Q. Where are you assigned?

16 A. I'm assigned in Denver, Colorado.

17 Q. What are your duties there?

18 A. I'm a Special Agent on the Terrors and Task  
19 Force and I'm also a team leader on our Evidence Response  
20 Team.

21 Q. As part of the Evidence Response Team back in  
22 January of 2001, were you called out, first of all, to  
23 Woodland Park and participate in that search?

24 A. Yes, sir. On the 22nd of January I was called  
25 to Woodland Park and took part in the RV search that we did

1 there. Subsequently, then, I took part in a number of other  
2 searches, one was, I believe, a Jeep, and then finally was  
3 involved in the search of the hotel room.

4 Q. Okay. Specifically in the early morning hours  
5 of January 24th, were you involved in the search of a hotel  
6 room there in Colorado Springs at a Holiday Inn?

7 A. Yes, sir. I was the team leader in that  
8 search.

9 Q. As the team leader, were you in charge of  
10 logging in all the property that was seized from that room?

11 A. Yes, sir, I was.

12 Q. Okay. Let me show you what has been marked as  
13 State Exhibit 787 through 805. You have seen these  
14 photographs outside the presence of the jury?

15 A. Yes, sir, I have.

16 Q. Are they all photographs of the inside of that  
17 room and the evidence that was seized?

18 A. Yes, sir, they are.

19 MR. SHOOK: We'll offer State Exhibits  
20 787 through 805.

21 MR. SANCHEZ: We have no objection.

22 THE COURT: State's 787 through 805 shall  
23 be admitted.

24 Q. (By Mr. Shook) Special Agent DiRito, do you  
25 see a laser pointer up there?

1 A. Yes, sir.

2 Q. Feel free to use that, if it would aid you in  
3 going over these photos.

4 A. Yes.

5 Q. First of all, 787, does that show the room as  
6 it was first entered?

7 A. Yes, sir, it does. The first thing I did when  
8 we got to the room is because we had a large number of  
9 agencies involved, I wanted to try to reduce the number of  
10 people that were in there at one time. So I took a  
11 photographer in with me initially and we took some overall  
12 shots of the scene.

13 Q. And that's what we're seeing, I guess, from  
14 the front door as you look into the room?

15 A. Yes, sir. That's looking in. That's probably  
16 one of the first shots that he took, coming in the front  
17 door.

18 Q. State Exhibit 788, is that a photograph after  
19 you have gotten a little farther into the room?

20 A. Yes, sir. That's inside the room, showing the  
21 right side opposite where two beds were located.

22 Q. I see a mattress is up against the wall there?

23 A. Yes, sir.

24 Q. Did it appear that mattress came from, I  
25 guess, the bed we see there in the foreground?

1           A.       Yes, sir. That was the way the mattress was  
2 located when we initially got in there. My understanding is  
3 that the SWAT team had to move that mattress aside once they  
4 were coming into the room or they found the mattress was up  
5 there, already placed that way.

6           Q.       Okay. The next photograph, is this looking  
7 back from the other end of the room?

8           A.       Yes, sir. This is roughly where the mattress  
9 was located, looking back towards the two beds and then the  
10 bathroom is on the far side on the right.

11          Q.       The items there on the bed, what do those  
12 consist of?

13          A.       Placed on the bed -- the negotiators had told  
14 the people inside the room to place all the firearms on the  
15 bed. And I believe that's exactly as the -- that is exactly  
16 as the room was laid out with firearms laid on the bed as we  
17 got there.

18          Q.       Okay. Showing you State's Exhibit 790. Is  
19 that a closer view of the firearms as they were laid out on  
20 the bed?

21          A.       Yes, sir, it is.

22          Q.       We also see some -- two bandoliers there; is  
23 that right?

24          A.       Yes, sir, two bandoliers had shotgun shells,  
25 12-gauge shotgun shells, in them.

1 Q. Again, State Exhibit 791 shows another angle  
2 of all the weapons that are on the bed?

3 A. Yes, sir.

4 Q. Let me show you State Exhibit 794. What do we  
5 see there?

6 A. After the initial photographs were taken, I  
7 then pulled two individuals in the room with me to  
8 essentially help me go through the room and look for  
9 firearms and to make the firearms safe for handling and  
10 collection. So inside the room I had Detective Jim Rogers  
11 from the Colorado Springs Police Department and Special  
12 Agent Ken Whitley from the Bureau of Alcohol, Tobacco, &  
13 Firearms.

14 So they came into the room and made the  
15 firearms safe. And then one at a time we placed each of the  
16 firearms on the bed with any magazines and rounds that were  
17 also in the firearms laid right there with them.

18 Q. So we see the ammunition that was in the  
19 firearms there laying with them outside the firearms?

20 A. Yes. For instance, on the firearm here, right  
21 next to it is the magazine that was inserted inside the  
22 weapon and then there's one round that was also inside the  
23 barrel of the weapon.

24 Q. State Exhibit 795, does that show the firearms  
25 after they've been bagged?



1           A.       Yes, sir. We actually bag the firearms and we  
2 put the ammunition and clips separately in a separate bag.  
3 So we kept ammunition and a round that was maybe inside of a  
4 chamber all together just labeled and associated with the  
5 firearm it came from.

6           Q.       State Exhibit 797, does it show another angle  
7 of the room?

8           A.       Yes, sir. There is looking away from the beds  
9 towards the opposite wall and there was some personal  
10 belongings on the floor there.

11          Q.       Various bags and things of that nature?

12          A.       Yes, sir.

13          Q.       And, now, looking at another photograph of the  
14 room, the box there down on the carpet, what is that a box  
15 of?

16          A.       I believe that was ammunition that was on the  
17 floor in the room there.

18          Q.       Did you find various types of boxes of  
19 ammunition throughout the room?

20          A.       Yes, sir, we did. Primarily in the boxes  
21 there was shotgun rounds, both pellet rounds and then slug  
22 rounds, which are two different types of shotgun rounds.

23          Q.       What are slug rounds?

24          A.       We would use -- for instance, from the law  
25 enforcement perspective, we would use slug rounds more as a

1 type of round we would use in a shotgun, if we were going to  
2 aim the gun using the sights on the guns. The pellet rounds  
3 shotgun rounds that have small, basically BBs inside of it.  
4 And you would use that more if you were trying to shoot at a  
5 general broad area.

6 Q. Were slug rounds found in those bandoliers?

7 A. Yes, sir.

8 Q. And then State Exhibit 799, does that show --

9 A. That's more ammunition there.

10 Q. And then --

11 A. That's a fanny pack and it had shotgun rounds  
12 that were inside of it.

13 Q. State Exhibit 800, what is that we see right  
14 below the bed?

15 A. There were a number of different holsters that  
16 were there. There was some ammunition and I believe it was  
17 fanny packs that were also on the ground. Fanny packs would  
18 be used to conceal a handgun.

19 Q. And 801, is this some of the handgun  
20 ammunition you previously testified about?

21 A. Yes, sir, it is.

22 Q. Let me show you some posters, three of which  
23 have been marked State Exhibits 465, 466, and 467. You took  
24 part in the seizure of the evidence from the RV and the  
25 Jeep; is that right?

1 A. Yes, sir, I did.

2 Q. You have seen these outside the presence of  
3 the jury?

4 A. Yes, I have.

5 Q. Are these a list of the weapons along with the  
6 model, type, and serial number of those seized from the RV,  
7 as well as the Jeep?

8 A. Yes, sir, they are.

9 Q. And then State Exhibit 822, is that a poster  
10 that reflects the weapons that you took custody of in the  
11 hotel room?

12 A. Yes, sir, it is.

13 MR. SHOOK: Your Honor, at this time  
14 we'll offer State Exhibit 822 with State Exhibits 465, 466,  
15 and 467.

16 MR. SANCHEZ: No objection, Your Honor.

17 THE COURT: State 822, 465 through 467  
18 shall be admitted.

19 Q. (By Mr. Shook) I'll show you these firearms,  
20 which have been marked State Exhibit 808, as well as 810  
21 through 818. Are these the actual handguns that you took  
22 into custody?

23 A. Yes, sir, they are.

24 Q. You have seen these outside the presence of  
25 the jury?

1 A. Yes, sir, I have.

2 MR. SHOOK: Your Honor, at this time we  
3 will offer State Exhibit 808 along with 810 through 818.

4 MR. SANCHEZ: No objection.

5 THE COURT: State Exhibits 808, 810  
6 through 818 shall be admitted.

7 Q. (By Mr. Shook) Let me show you two shotguns  
8 which have been marked 818 and 820. Are these the two  
9 shotguns you took into custody?

10 A. Yes, sir, they are.

11 MR. SHOOK: We'll offer State Exhibits  
12 819 and 820.

13 MR. SANCHEZ: No objection.

14 THE COURT: Nos. 819 and 820 shall be  
15 admitted.

16 Q. (By Mr. Shook) Special Agent DiRito, why  
17 don't we just go through one at a time, just kind of  
18 correlating with the poster we have. The first one up  
19 there, the Smith & Wesson, is that reflected there in the  
20 gun there at the top?

21 A. Yes, sir, it is. It's a Smith & Wesson, model  
22 SW-380.

23 Q. What is the State exhibit marker on that  
24 particular weapon?

25 A. That's No. 808.

1 Q. Did your notes indicate that every one of  
2 those weapons were loaded at the time of their seizure?

3 A. Yes, sir. This gun had a round in the chamber  
4 and a magazine inserted into the firearm.

5 Q. Okay. And then the second, the Smith &  
6 Wesson .40 caliber that is listed as No. 37?

7 A. That's State Exhibit 816. That's a Smith &  
8 Wesson SW-40VE and this one is a .40 caliber. It also had a  
9 fire -- a round inserted into the chamber and a magazine  
10 inserted into it.

11 Q. Okay. And then the next weapon there on the  
12 rack.

13 A. This is a Smith & Wesson 629-5. It's State  
14 Exhibit 810 and it's a .44 Magnum. This is a revolver and  
15 it had six rounds that were in the cylinder.

16 Q. All right.

17 A. The next one is a Smith & Wesson. It's State  
18 Exhibit No. 811. It's also the same model as 629-5. It's a  
19 .44 caliber handgun and it did have six rounds that were  
20 inserted into the cylinder.

21 Q. Okay. The next weapon.

22 A. The next one is a Beretta. It's State Exhibit  
23 No. 812. It's a model 96 and it's a .40 caliber handgun.  
24 This one did have a round in the chamber and a magazine  
25 inserted into it. The next firearm was a Heckler and Koch.

1 It's a .40 caliber handgun. It's State Exhibit No. 813.

2 And it did have a round inserted into the chamber and a  
3 magazine inside of it.

4 The next firearm was a Smith & Wesson. This  
5 is a .40 caliber handgun. It's State Exhibit No. 814. It  
6 had a round inserted into the chamber and a magazine inside  
7 of the handgun.

8 The next firearm is a Charles Dailey.  
9 It's model 1911 A-1, State Exhibit No. 815. This is a .45  
10 caliber handgun and it did have a round inserted into the  
11 chamber and a magazine inside of it, also.

12 The next one was a North American Arms.  
13 It's a real small revolver, .22 caliber, and it had five  
14 rounds in the cylinder.

15 Q. Okay.

16 A. And the last one here is a Smith & Wesson,  
17 model 60-9. It's a .357 revolver. State Exhibit No. 818.  
18 And this one had five rounds that were in the cylinder.

19 Q. Then the two shotguns that were taken in, 819  
20 and 820, are those reflected also on the poster?

21 A. Yes, sir, they are.

22 Q. And were they loaded or unloaded?

23 A. The model -- the first one, the Remington  
24 model 870, is a 12-gauge shotgun, that one had five rounds  
25 that were inside the shotgun, but there was no round in the

1 chamber. Essentially to get a round in the chamber, you  
2 would have to pump the action on the shotgun once to get a  
3 round in there.

4 The last one was a Mossberg. It's a  
5 model five hundred 12-gauge shotgun. That one had six  
6 rounds that were inserted and one round was chambered inside  
7 of it.

8 Q. Let me show you State Exhibit 803. Is this  
9 some other clothing items that you photographed in the room?

10 A. Yes, sir. These were two ski masks that were  
11 located inside there. They had the holes cut out for the  
12 mouth and the eyes.

13 Q. Now, did you also recover some cash from the  
14 room?

15 A. Yes, sir, two separate locations inside the  
16 room. One contained \$3,525 and the other one was \$1,300.

17 Q. State Exhibit 805 shows some of that money on  
18 the bed?

19 A. Yes, sir, it is.

20 Q. And State Exhibit 804, after it's been bagged  
21 up?

22 A. Yes, sir.

23 MR. SHOOK: We'll pass the witness.

24 CROSS-EXAMINATION

25 BY MR. SANCHEZ:

1 Q. Agent, the weapons that were recovered that  
2 you testified about today, were they all on the bed?

3 A. Um, I know the handguns. I would have to look  
4 back at the actual notes from -- I actually placed each of  
5 the items inside the room there. Quite honestly, I don't  
6 recall offhand. The majority were on the bed, though.

7 Q. And that's how they were directed to --

8 A. Yes, sir.

9 Q. -- put them on the bed; is that correct?

10 A. They were told by the negotiators to place all  
11 the firearms on the bed.

12 Q. What you found throughout the room was  
13 ammunition, but the weapons were on the bed; is that  
14 correct?

15 A. Yes, sir.

16 Q. And the weather around that time was --

17 A. It was very early in the morning, chilly.

18 Q. Okay. It had been snowing prior to that day?

19 A. Yes, sir.

20 MR. SANCHEZ: I pass the witness.

21 MR. SHOOK: That's all we have. May this  
22 witness be excused, Your Honor?

23 MR. SANCHEZ: No objection, Your Honor.

24 THE COURT: He may.

25 MR. SHOOK: Call Sergeant Spivey.



1 THE COURT: We'll take our lunch break  
2 now until 1:00 and we'll resume testimony at 1:00.

3 (Recess)

4 [Jury in]

5 THE COURT: Please be seated. Mr. Shook?

6 MR. SHOOK: State calls Sergeant Spivey.

7 JEFF SPIVEY,

8 having been duly sworn, was examined and testified as  
9 follows:

10 DIRECT EXAMINATION

11 BY MR. SHOOK:

12 Q. Tell us your name, please.

13 A. It's Jeff Spivey.

14 Q. And how are you employed, sir?

15 A. I'm a Sergeant with the Irving Police

16 Department.

17 Q. How long have you been with the Irving Police

18 Department?

19 A. Seventeen years.

20 Q. And what division are you assigned?

21 A. Criminal Investigations Division.

22 Q. Back on December 24th of 2000, were you  
23 requested to go to the Oshman's store there off Highway 183?

24 A. Yes, sir, I was.

25 Q. And what was your assignment that evening?

1 A. I was assigned the co-lead investigation of  
2 the murder of Officer Hawkins.

3 Q. And you shared those duties with Detective  
4 Johnson?

5 A. That's correct.

6 Q. In the early morning hours of the 25th, did  
7 you attend the autopsy of Aubrey Hawkins?

8 A. Yes, I did.

9 Q. And were his personal effects delivered to the  
10 Medical Examiner's Office, along with his body?

11 A. Yes, they were.

12 Q. Did those include his second gun?

13 A. Yes.

14 Q. Let me show you what has been marked as State  
15 Exhibits 987, 988, and 989. Is 987 his weapon, 988 the  
16 clip, and 989 the holster it was in?

17 A. Yes, they are.

18 MR. SHOOK: We'll offer State Exhibits  
19 987 through 989.

20 MR. SANCHEZ: No objection, Your Honor.

21 THE COURT: Nos. 987 through 989 shall be  
22 admitted.

23 Q. (By Mr. Shook) That evening and in the  
24 morning hours, did you develop seven suspects that you  
25 thought were involved in the murder of Officer Hawkins?

1 A. Yes, we did.

2 Q. And were those the seven individuals that had  
3 escaped from the penitentiary on December 13th, 2000?

4 A. Yes, they were.

5 Q. Did those include Patrick Murphy?

6 A. Yes.

7 Q. Do you see Patrick Murphy here in the  
8 courtroom today?

9 A. Yes, I do.

10 Q. And where is he seated?

11 A. He's seated at the defense table, left, in a  
12 black sportcoat.

13 MR. SHOOK: Your Honor, if the record  
14 could reflect that the witness has identified the defendant.

15 Q. (By Mr. Shook) At that point in time were  
16 warrants, arrest warrants, issued for Mr. Murphy and his  
17 accomplices?

18 A. Yes, they were.

19 Q. The information you had on hand, did that  
20 include identification of all seven suspects there by the  
21 employees at the Oshman's?

22 A. Yes, it did.

23 Q. And was there a piece of evidence left there  
24 at the crime scene that was linked back to those suspects?

25 A. Yes. A revolver that had been stolen from the

1 Department of Corrections.

2 Q. All right. Now, there was another piece of  
3 evidence, a smoke grenade that was left inside the Oshman's?

4 A. Yes, there was.

5 Q. Did you make some efforts to try to locate  
6 where that was sold?

7 A. Yes. By tracking through the manufacturer  
8 where the -- that lot number had been shipped, I was able to  
9 determine where that particular smoke grenade had been  
10 purchased.

11 Q. And where had it been purchased?

12 A. At a Spy Store in Arlington.

13 Q. Did you go to that store itself?

14 A. Yes, I did.

15 Q. And did you -- were you able to determine how  
16 many of these smoke grenades had been sold?

17 A. Two.

18 Q. Let me show you State Exhibit 341. Is that  
19 the same type of smoke grenade that was recovered at the  
20 Oshman's?

21 A. Yes, it is.

22 Q. Did you also look at the Spy Store to  
23 determine if they sold security caps and badges?

24 A. Yes, they did.

25 Q. And let me show you what has been marked as

1 State Exhibit 342, the security hat. Did you see similar  
2 hats on sale at that particular store?

3 A. Yes, there were.

4 Q. Let me show you State Exhibit 468, which is a  
5 wallet that has a security police badge. Did you see  
6 similar badges on sale at that particular store?

7 A. Yes, sir.

8 Q. All the -- did you receive an inventory list  
9 of all the guns that were taken from the Oshman's?

10 A. Yes, I did.

11 Q. Including their serial numbers?

12 A. Yes.

13 Q. And after the capture of Mr. Murphy and his  
14 accomplices, did you check to see if all weapons had been  
15 recovered in the search of the RV, the Jeep, the persons  
16 that were arrested, as well as that hotel room?

17 A. Yes. We did recover all the weapons that were  
18 stolen from the Oshman's.

19 Q. And they were all accounted for?

20 A. Yes, sir.

21 Q. Now, there was a video camera and tape in  
22 Officer Hawkins' squad car; is that correct?

23 A. That's correct.

24 Q. Was that tape turned over to you the night of  
25 the incident?

1 A. Yes, it was.

2 Q. Did you review the tape?

3 A. Yes, I did.

4 Q. What was your purpose for doing that?

5 A. To see if the offense had been captured on his  
6 in-car video.

7 Q. Had the offense been captured?

8 A. No.

9 Q. Had the camera recorded Officer Hawkins on  
10 that day?

11 A. Yes, it had.

12 Q. And what incident had that occurred?

13 A. A traffic stop that he had made at  
14 approximately 5:00 that afternoon.

15 Q. And does that tape show Officer Hawkins on  
16 camera and show how he was dressed that day?

17 A. Yes, it does.

18 Q. Did it show the position of the medals on his  
19 uniform, as well as how his belt was positioned?

20 A. That's correct.

21 Q. Let me show you State Exhibit 489. Have you  
22 reviewed this and is this the copy of the videotape that  
23 shows that last stop by Officer Hawkins?

24 A. Yes, it is.

25 MR. SHOOK: Your Honor, at this time

1 we'll offer State Exhibit 489.

2 MR. SANCHEZ: No objection.

3 THE COURT: No. 489 shall be admitted,  
4 subject to the ruling made by the Court.

5 MR. SHOOK: May I have permission to play  
6 a portion of that tape at this time, Your Honor?

7 THE COURT: You may.

8 Q. (By Mr. Shook) Is this Officer Hawkins as  
9 he's issuing a citation?

10 A. Yes, it is.

11 Q. That's how the belt was positioned along with  
12 where he had his ammo clips on that particular day?

13 A. That's correct.

14 MR. SHOOK: We'll pass the witness.

15 CROSS-EXAMINATION

16 BY MR. SANCHEZ:

17 Q. Sergeant, in your investigation were you able  
18 to determine who actually purchased those items from the Spy  
19 Store?

20 A. Through other interviews with the other  
21 defendants, yes.

22 Q. And who was that?

23 A. That was George Rivas, Donald Newbury, Randy  
24 Halprin, and Randy (sic) Harper were in that store that day.

25 MR. SANCHEZ: I pass the witness.

1 MR. SHOOK: That's all we have, Judge.

2 THE COURT: Thank you, Sergeant.

3 MR. SHOOK: Your Honor, members of the  
4 jury, at this time the State will rest its case in chief.

5 THE COURT: State rests. Members of the  
6 jury, I need to have a brief recess. If you would, go with  
7 the Sheriff.

8 [Jury out]

9 THE COURT: Let the record reflect the  
10 State has rested their case in chief at 1:12 p.m. What says  
11 the defense?

12 MS. BUSBEE: At this time, Your Honor,  
13 may it please the Court, we make a motion for an instructed  
14 verdict. The State has failed to make a prima facie case of  
15 all the elements alleged in the indictment.

16 THE COURT: Motion denied.

17 MS. BUSBEE: At this point, Your Honor,  
18 we do intend to rest. In an abundance of caution, we have  
19 discussed this with our client and he does not intend to  
20 avail himself of his right to testify. If the Court would  
21 like to inquire, he's ready to answer your question on that  
22 matter as well.

23 THE COURT: Mr. Murphy, it's real simple.  
24 You've been in court the whole time and you know the drill  
25 and you know the program. You have an absolute right to



1 testify, present evidence on your behalf, if you choose to  
2 do so. Obviously, if you elect not to do so, I'm going to  
3 instruct this jury that they cannot consider that for any  
4 fact or circumstance against you whatsoever, period, end of  
5 story.

6 It's your decision and your decision  
7 alone on advice of counsel.

8 THE DEFENDANT: Yes, sir. I've decided  
9 not to testify, sir.

10 THE COURT: Very well, sir. Do you have  
11 any questions of me?

12 THE DEFENDANT: No, sir.

13 THE COURT: For the benefit of the  
14 parties, given the hour of the day and the fact that we've  
15 still got to work on a charge and then by the time we get  
16 the charge worked up, it takes me 20 minutes to read it and  
17 an hour per side to argue -- or how much time would you need  
18 to argue?

19 MS. BUSBEE: Well, I don't think we need  
20 an hour.

21 THE COURT: So I'm not going to limit  
22 argument.

23 MS. BUSBEE: What do you think,  
24 Mr. Shook?

25 MR. SHOOK: Can I think on it for a

1 minute?

2 THE COURT: Yes.

3 MR. SHOOK: We don't have to decide this  
4 second, do we?

5 THE COURT: The bottom line is we can't  
6 get through arguments and give the people any time at all to  
7 deliberate today.

8 MS. BUSBEE: I appreciate that. That  
9 would be unkind. So maybe we should start in the morning.

10 THE COURT: Give people an opportunity to  
11 collect their thoughts and present arguments first thing  
12 tomorrow morning. I think that I can be here at 8:30.  
13 We'll look. So with that, the defense intends to rest?

14 MS. BUSBEE: Yes, Your Honor.

15 THE COURT: State will close?

16 MR. SHOOK: Yes, sir.

17 THE COURT: Defendant will close?

18 MS. BUSBEE: Naturally.

19 THE COURT: Very well, Sheriff. Bring  
20 the jury back in.

21 [Jury in]

22 THE COURT: Please be seated.

23 Mr. Sanchez, the State having rested, what says the defense?

24 MR. SANCHEZ: Ladies and gentlemen and  
25 Your Honor, at this time we would rest.

1 THE COURT: Defense rests.

2 MR. SHOOK: State will close.

3 MR. SANCHEZ: We will close.

4 THE COURT: Members of the jury, that's  
5 all the evidence you are going to hear on the indictment  
6 presented to this jury.

7 Now, we would normally -- the next step  
8 is the Court will prepare a charge and I'm at 15 pages right  
9 now. This is the law that I will present to you. Then the  
10 attorneys will follow with their summations. I give each  
11 side approximately an hour. We still have to get together  
12 on the charge. So you look at the time. By the time I get  
13 the charge prepared and if we were to let the attorneys  
14 argue this afternoon, you wouldn't retire to begin  
15 deliberations until somewhere around 4:00. And that's being  
16 optimistic, okay?

17 Any time you put six lawyers and a judge  
18 together to try to agree on the charge, even at the very  
19 best, it takes a long time. So I'm not going to put you in  
20 a situation to be here late. I told you that when we seated  
21 this jury. I'm not going to do that. I want you to  
22 understand what I'm doing and why I'm doing it.

23 So don't leave thinking we only worked  
24 half a day. That's because I can't predict exactly how long  
25 the testimony will last. So the trial in this phase has

1 been concluded and you have all the evidence that you are  
2 going to hear in this matter.

3 I'll have you back tomorrow morning at  
4 8:30. At that point we will have a charge ready. I will  
5 present the charge to you. And then the attorneys will  
6 present their final arguments.

7 Same warnings, no media, no newspaper, no  
8 TV news, no Internet, no friends, family, coworkers, radio.  
9 Everything you need to learn about this case comes from  
10 where? The witness stand. All right. So you get an early  
11 day off, go to work, go shopping, enjoy the weather while it  
12 lasts, be ready to go to work. Tomorrow will be a tough day  
13 for y'all.

14 So, if you would, we'll see you tomorrow  
15 morning. I hear 9:30 over here. Let's make it 9:00.  
16 That's usually when I like to start. Straight up 9:00. And  
17 the Sheriff will have you here ready to go to work at 9:00  
18 a.m. tomorrow morning. See you at that time.

19 [Jury out]

20 [End of Volume]  
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23  
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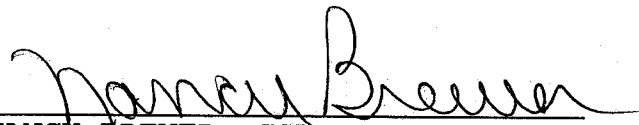
1 STATE OF TEXAS \*

2 COUNTY OF DALLAS \*

3 I, NANCY BREWER, Official Court Reporter for the 283rd  
4 Judicial District Court, do hereby certify that the above  
5 and foregoing constitutes a true and correct transcription  
6 of all portions of evidence and other proceedings requested  
7 in writing by counsel for the parties to be included in this  
8 volume of the Reporter's Record, in the above-styled and  
9 numbered cause, all of which occurred in open court or in  
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13  
14  
15   
16 NANCY BREWER, CSR, NO. 5759  
17 Expiration Date: 12-31-04  
18 Official Reporter, 283rd JDC  
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VOLUME 44 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

\*\*\*\*\*

JURY TRIAL

\*\*\*\*\*

**FILED IN**  
COURT OF CRIMINAL APPEALS  
MAR 9 - 2004  
Troy C. Bennett, Jr., Clerk

On the 13th day of November, 2003, the following  
proceedings came on to be heard in the above-entitled and  
numbered cause before the Honorable Vickers L. Cunningham,  
Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

A P P E A R A N C E S

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P R O C E E D I N G S

[Jury out]

THE COURT: We're on the record. State ready to go over the charge?

MS. SMITH: Yes, we are, Your Honor.

THE COURT: Defense?

MR. TATUM: Yes, Your Honor.

THE COURT: State have any objections, suggestions for language to be included in this charge?

MS. SMITH: No, Your Honor.

THE COURT: Defense?

MR. TATUM: Yes, Your Honor. We certainly thank you for all the work you did before the trial and giving us the basis to work with, which saved a lot of time. For the record I want to thank you for that.

Of course, we must maintain certain positions and we wanted to reiterate our constitutional objections that were raised pretrial through the prosecution of this case as a death penalty case and ask the Court to take judicial notice of those pretrial motions and rulings in regards as this case is submitted as a death penalty case.

THE COURT: The Court will take judicial knowledge of all the previously filed motions.

MR. TATUM: I assume --



1 THE COURT: My previous rulings will  
2 stand.

3 MR. TATUM: Thank you, Your Honor. We  
4 would also ask the Court to enter an instructed verdict  
5 based on the Enmund versus Florida case 458 US782, that  
6 evidence fails to show that defendant killed or attempted to  
7 kill the deceased. We submit that to the Court.

8 THE COURT: Overruled.

9 MR. TATUM: Thank you. We would also ask  
10 the Court to require the State to elect which of the two  
11 means or methods in the indictment to prove capital murder,  
12 since there's two separate allegations, one being killing a  
13 police officer and one the murder during the commission of a  
14 felony.

15 Being that if they are both submitted  
16 under the Texas General Verdict Statute, the jury, we do not  
17 have a requirement or instruction that all 12 must agree on  
18 which theory. In other words, we could have ten for one  
19 theory and two for another or they could split and still  
20 come to a unanimous verdict.

21 And we feel that this violates the  
22 constitutional requirements for all 12 to agree beyond a  
23 reasonable doubt as to the various elements of the offense.

24 THE COURT: That issue has been up and  
25 down many times and I will deny your request.

1 MR. TATUM: Thank you. We also request  
2 an election between the two types of parties charge.  
3 There's a 702(a) which we call basically assisting and a  
4 702(b), which is basically -- defines it as joining a  
5 conspiracy.

6 The same argument being that the jury may  
7 split under the General Verdict Statute using Texas and not  
8 be unanimous on either type of parties and/or as it applies  
9 to the two types of ways to commit the offense.

10 THE COURT: I understand your issue.  
11 Motion denied.

12 MR. TATUM: Thank you, Your Honor. We  
13 also raise those issues and argue that they violate the  
14 United States Constitution's Amendment 6, 14, Texas  
15 Constitution, Article 1, Section 19, Article 5, Section 13,  
16 in raising that as a constitutional issue, too. We do not  
17 want to waive that provision.

18 THE COURT: Yes, sir.

19 MR. TATUM: Same rulings?

20 THE COURT: Same rulings.

21 MR. TATUM: Thank you. We also from our  
22 discussion yesterday had requested the submission of the  
23 offense of murder as a lesser included offense to follow the  
24 submission of the offense of capital murder and with the  
25 appropriate language that if the jury were to have a

1 reasonable doubt of which one to do or convict of, that they  
2 would convict of murder instead of capital murder. We feel  
3 that the evidence, when dissected enough, the jury could  
4 believe there is a lack of specific intent to kill.

5 THE COURT: And let the record reflect  
6 that the Court very diligently reviewed that issue and asked  
7 the parties to bring me any evidence that would allow me to  
8 put that in the charge, any cases, and I have not seen any  
9 evidence that would allow me to include that lesser  
10 application in the charge.

11 MR. TATUM: Thank you, Your Honor.  
12 That's overruled, too?

13 THE COURT: Yes, it is.

14 MR. TATUM: We also request a defensive  
15 charge on what is called independent impulse, which has been  
16 defined basically as part of Mayfield versus State, and ask  
17 that the Court include a defensive instruction in that  
18 regard which arises out of the charge of Section 702(b) of  
19 the conspiracy as part of the parties definition and that's  
20 Mayfield versus State, 716 Southwestern 2nd 509, Texas Crim.  
21 App. 1986.

22 THE COURT: The Court has also reviewed  
23 that language and overrules your request.

24 MR. TATUM: We also object to the  
25 submission of the case under the 702(b) theory of

1 co-conspirator liability as a parties charge because it  
2 conflicts with the requirement of capital murder that there  
3 be a specific intent to kill or the conscious objective of  
4 the defendant to kill or to cause the loss of life. And it  
5 was -- or you cannot work it together. They don't work  
6 together.

7 And we also feel that it violates the  
8 various constitutional sections that were previously stated.

9 THE COURT: I understand your issue and  
10 overrule your request.

11 MR. TATUM: I believe that concludes our  
12 objections, Your Honor.

13 THE COURT: How much time does each side  
14 wish to request argument? Can you do it in an hour or less?

15 MR. SANCHEZ: I can do it in less than an  
16 hour.

17 THE COURT: Mr. Shook, can you work with  
18 an hour?

19 MR. SHOOK: Sure, Judge.

20 THE COURT: Ready for the jury.

21 MR. SANCHEZ: Your Honor, if I could just  
22 be told when I've used half an hour.

23 THE COURT: I'll set the timer for half  
24 an hour. Who will open for the State?

25 MR. WIRSKYE: I will, Your Honor.

1 THE COURT: How much time do you want?

2 MR. WIRSKYE: When and if I've used 20.

3 THE COURT: You will hear the beeper.

4 We're ready for the jury.

5 [Jury in]

6 THE COURT: Good morning. Please have a  
7 seat. Members of the jury, I'm glad we didn't try to push  
8 this yesterday. As you can see, I didn't finish the charge  
9 until 3:51 yesterday afternoon. So like I said, I'm not  
10 going to waste your time, but when we're here, we're  
11 working.

12 As I said yesterday, what I'm going to do  
13 at this time is I'm going to read to you the Court's charge.  
14 That's the law you will follow in this case. And then the  
15 attorneys will have their final summations. And you will  
16 have this copy in writing. So listen carefully at this  
17 time.

18 [At this time the jury charge was  
19 read to the jury by the Court.]

20 THE COURT: With that, we'll have final  
21 summation. Mr. Wirsky?

22 MR. WIRSKYE: May it please the Court.  
23 Ladies and gentlemen, thank you for your patience and  
24 attention as the trial goes into its fourth day. You heard  
25 about two and a half days, I guess, of evidence. You saw

1 quite a bit of evidence. It's overwhelming evidence. It's  
2 evidence that makes your decision very clear. It's evidence  
3 that shows that there is only one just verdict in this case  
4 and that is finding Patrick Murphy guilty of capital murder.

5 What I would like to do is briefly talk  
6 to you a little bit about the law, some of the things in the  
7 Court's charge, and then I would like to run through and  
8 share some observations that I have on the facts of the  
9 case, the evidence that you heard.

10 You know, we talked to each and every one  
11 of you in jury selection. We told you up front we're trying  
12 him as a nonshooter. We are trying him as a nontriggerman.  
13 We told you that up front. And we explained the law to you  
14 when it comes to a conspirator.

15 If the conspirator should have  
16 anticipated the murder, then he is guilty of capital murder.  
17 Each and every one of you told us you understood the law,  
18 you agreed with the law, and you could follow the law in the  
19 appropriate case. And this is the appropriate case. The  
20 evidence cannot be more clear. The evidence cannot be more  
21 damning for Patrick Murphy.

22 In the Court's charge, I know the Judge  
23 read it and you haven't seen a copy of it yet, there are  
24 basically four different ways to find him guilty of capital  
25 murder. Let me try to run through it really quick and try

1 to simplify it for you.

2 If you will recall, we have alleged  
3 capital murder has been committed two different ways in this  
4 case, one, the murder of a police officer on duty; secondly,  
5 an intentional murder during the course of a robbery. And  
6 recall, also, there are two different ways to prove each of  
7 those. Okay? That's why you have the four different ways  
8 to find him guilty.

9 You could find him guilty as a party if  
10 you think he aided, assisted, or directed someone to commit  
11 capital murder. And, of course, you could find him guilty  
12 as a conspirator, if you think that he should have  
13 anticipated murder. That's why you have the four different  
14 ways. If we prove one or if we prove all, he would be found  
15 guilty of capital murder.

16 There's things you may recall from jury  
17 selection, these things called lesser included offenses.  
18 There is one in the Court's charge, the lesser included  
19 offense of aggravated robbery. Simply, folks, I can tell  
20 you up front, you will never even reach it during your  
21 deliberations.

22 And the reason is this. Before you ever  
23 even consider aggravated robbery, each and every one of you  
24 have to agree that he's not guilty of capital murder.  
25 That's simply not the case. It flies in the face of reason.

1 It flies in the face of all the evidence that you have  
2 heard.

3 And, I mean, really, it was overwhelming  
4 evidence, a fraction of which we see in the courtroom today.  
5 You know, this is not a whodunit. It's not a TV mystery  
6 that has all these fictional twists and turns and different  
7 suspects. This case is straightforward. We don't need a  
8 Sherlock Holmes to come in here and make a brilliant  
9 deduction about who the real villains were. We know exactly  
10 who the villains are.

11 There's no drama in this case, really, in  
12 the guilt phase, in this phase. We know exactly who the  
13 villains are, because they got caught redhanded with all the  
14 Oshman guns, they got caught redhanded with all the Oshman's  
15 goods. Okay?

16 This is a simple case, really. You know,  
17 even excellent, fine lawyers have difficulty mounting a  
18 defense in a case like this where the evidence is so  
19 overwhelming.

20 And, very frankly, it boils down to one  
21 thing. The whole case boils down to one issue and that  
22 issue is, do you think Patrick Murphy should have  
23 anticipated the murder that Christmas Eve. Okay?  
24 Again, the evidence is clear. Of course he should have. In  
25 fact, you can take that evidence to the next step. He



1 actually anticipated that murder.

2 That's what I want to visit with you now.

3 At this stage of the trial your only relevant concern is  
4 should he have anticipated. But I'll submit to you the  
5 evidence shows beyond any doubt that he went a step further,  
6 that he actually anticipated the murder.

7 And, basically, it's such a common sense  
8 proposition, folks, okay, when you are talking about a  
9 person's intent, what they anticipated. There was only one  
10 reason to take a loaded weapon to a robbery. That is  
11 because you anticipate using it. You anticipate violence.  
12 You anticipate murder. He not only took one loaded weapon  
13 to a robbery, he took four loaded weapons to a robbery.  
14 That shows you his intent. That shows you his actual  
15 anticipation.

16 I mean, look at what he took. He had the  
17 two .357s from the prison. Of course, then they were  
18 functional and fully loaded with what he calls the Magnum  
19 rounds. He also had this shotgun, a prison shotgun,  
20 12-gauge shotgun, had ten rounds for that.

21 What else does he have? What does he  
22 tell us? He's got a scanner. He has got a two-way radio.  
23 And, of course, he's got this book, the newest and most  
24 updated edition, the 2001 edition of the police frequency  
25 which we know he programed personally, each and every code

1 for the Irving Police Department.

2 And, finally, he has his AR-15 assault  
3 rifle, as he's sitting out there in the Suburban in the  
4 Oshman's parking lot. He has this as well.

5 Imagine, if you will, that this witness  
6 chair is the front seat of that Suburban and Patrick Murphy  
7 is sitting right there. Look at what he has around him. I  
8 mean, that pile of evidence, that pile of equipment, speaks  
9 more loudly and more eloquently as to his intent and his  
10 anticipation than I ever could. Think about that, folks.  
11 Why was he sitting there with all those things? Why do you  
12 need a scanner? If you don't anticipate that the police are  
13 coming, why do you need a police scanner? It's just such a  
14 common sense proposition and it makes your decision so very  
15 clear. Okay?

16 But there's even further evidence. Okay?  
17 If you want to talk about his mindset, what is really going  
18 on in his mind, you can look at three different things. You  
19 can look at the circumstances of his life. Okay? You can  
20 look at his actions. And, finally, third, you can look at  
21 his words.

22 Let's go through each of those and try to  
23 determine what his mindset, what his intent was. What was  
24 his existence like back in December, 2000? What was his  
25 life like? What was going on in Patrick Murphy's life?

1           He and the six others had escaped from  
2 the Connally Unit in south Texas. He was on the run. They  
3 knew law enforcement would be after them. They knew modern  
4 day posses of lawmen would do their sworn duty and try to  
5 recapture them and send them back.

6           In December of 2000 he led a life of  
7 desperation. Okay? And that desperation equals  
8 anticipation, because don't be fooled, folks, he  
9 consistently and constantly, every moment of his existence  
10 back then, he was anticipating a police officer. Behind  
11 every door, around every corner, behind every bush, he was  
12 constantly, consistently, anticipating that he may run into  
13 law enforcement. That was his existence back then. It was  
14 complete and totally consumed with anticipation.

15           And then take it another step further.  
16 He decides with his friends to go do an aggravated robbery,  
17 an armed robbery of that Oshman's, basically an armed  
18 assault of that Oshman's. Do you think that may have  
19 heightened his sense of anticipation that there may be an  
20 encounter with law enforcement and someone may be hurt,  
21 someone may be killed, someone may be murdered? Of course  
22 it does. He has to know that.

23           In a sense, that was his most desperate  
24 hour in front of that Oshman's. What do you think he  
25 anticipated when he saw Officer Hawkins' cruiser come

1 around? When he heard the radio call that Officer Hawkins  
2 got? Suspicious persons at Oshman's. Do you think he was  
3 shocked that Aubrey Hawkins actually answered that call? Do  
4 you think that he was shocked that Aubrey Hawkins showed up  
5 to what turned out to be the last call he ever answered? Of  
6 course not. It flies in the face of reason. It flies in  
7 the face of the evidence.

8 To believe that he is not guilty of  
9 capital murder, you would have to believe that he sat in  
10 that Suburban, that chair right there, surrounded by that  
11 equipment, in basically a state of suspended animation,  
12 deaf, dumb, nothing going on upstairs, that he was some sort  
13 of vegetable. And, of course, he wasn't.

14 How do we know he wasn't? We can look at  
15 his actions around the actual robbery. Okay? They did  
16 quite a bit of planning. I'm not going to tell you it was a  
17 good plan, but it was at least a plan that they had thought  
18 about. They, in their own way, tried to analyze the  
19 situation and planned for every contingency. Don't you  
20 think they planned for the contingency of the Irving police  
21 officers? Come on, he tells you in his own words, folks,  
22 hey, I think it's high risk. I wouldn't have done Oshman's.  
23 And then he tells you why. He wouldn't have done Oshman's,  
24 because he's familiar with Irving Police Department's quick  
25 response time. Again, how much simpler does it get?

1                   It shows exactly his actual anticipation  
2   that Officer Hawkins or another Irving officer would show up  
3   out there and there would be violence and there would be  
4   murder. He's concerned about the number of employees, too  
5   many employees. Why is he concerned about that? Because  
6   the greater number of employees, the greater chance that  
7   something could go wrong and there may be violence out  
8   there. There may be murder out there. He is anticipating  
9   this all the way through.

10                  Let's talk about his role in the offense,  
11   this lookout, this backup, this sniper. His role in the  
12   offense tells you everything that you need to know about his  
13   state of mind and his anticipation.

14                  And the reason is this, okay? Of all  
15   those seven people involved in that robbery, it was his job  
16   and his job alone to have that heightened sense of  
17   anticipation. That was his job. He was the lookout. He  
18   was supposed to anticipate Officer Hawkins coming. That was  
19   his job. He was the most trusted one. The others are  
20   inside. They were relying on him to call in. His role  
21   tells you everything you need to know about his mindset,  
22   folks.

23                  And I guess it's unfortunate that he  
24   performed his role so well and so ably that night. We know  
25   now that he radioed in, we've got company. There's police.

1 They're going around to the back. He gave out the precise  
2 information that basically sent a team of assassins back to  
3 the back that felled Officer Hawkins in a frenzy of gunfire.  
4 We know he was too good at his job.

5 You know, they may argue -- they may say,  
6 well, he said abort. He said, leave, leave. They may say,  
7 well, that's got to show you something about him. That's  
8 got to show you something that he didn't anticipate or he  
9 shouldn't have anticipated or he didn't want anything bad to  
10 happen. And, folks, nothing is further from the truth.

11 When he radioed that, assuming he did,  
12 assuming that was the truth, that he was really on the radio  
13 saying, abort, leave, leave, assuming that he said that,  
14 that wasn't a warning for them to run. They could have run,  
15 if they wanted to. Of course, they would have had to drop  
16 the money, the guns, the ammunition. They weren't about to  
17 do that. They weren't about to do that.

18 They didn't run. It wasn't a signal to  
19 them to get the heck out of there. No. It was a signal to  
20 them, hey, we've got company. It's going down. You need to  
21 arm yourselves and prepare accordingly. Because, you see,  
22 this whole thing was planned. Okay? They had planned for  
23 an Aubrey Hawkins. They had armed themselves for an Aubrey  
24 Hawkins. They had anticipated, actually anticipated, an  
25 Aubrey Hawkins. That wasn't a warning for them to leave.

1 It was a heads up. It was a heads up, folks, we got  
2 company.

3 What did he do after the robbery? What  
4 does he tell us? He gets the AR-15, goes over to the  
5 rendezvous point, gets out of the driver's seat, and gets in  
6 the back seat with his AR-15. Says he's prepared to  
7 initiate a firefight with pursuing police. Again, it  
8 doesn't get any clearer. That's his frame of mind. That's  
9 his mindset. That's his intention. That's his  
10 anticipation. That's what he told Detective Johnson.

11 What does he tell Detective Herrill,  
12 Colorado Springs? I was set up to do damage from behind in  
13 the event of a standoff. That was his intent. If he had  
14 had his way, what he intended, what he anticipated, was to  
15 leave more bullet riddled bodies of Irving police officers  
16 out along 183. And thank God that there was not another  
17 police officer behind him on 183, because he would have  
18 never known. He would never have anticipated what was  
19 waiting for him, Patrick Murphy and an AR-15.

20 That was his bloody, bloody intention  
21 that day. Don't be fooled, don't be led astray, keep your  
22 eyes on the evidence.

23 Folks, I'm not going to take up much more  
24 of your time. The evidence is clear. The evidence is  
25 overwhelming. I want to leave with you a couple of final

1 thoughts, though.

2 But for the actions and the abilities of  
3 Patrick Murphy, Aubrey Hawkins may have had a fighting  
4 chance. We'll never know. As outgunned and as outnumbered  
5 as he was, he may have had a fighting chance. But we'll  
6 never know and we'll never know because of this man. We'll  
7 never know because this man anticipated an Aubrey Hawkins, a  
8 police officer. And he called in his team to dispatch that  
9 threat and they did so in a very deadly, a very lethal way,  
10 11 gunshot wounds to Officer Hawkins, three more stopped by  
11 his ballistic vest.

12 But for Patrick Murphy, Aubrey Hawkins  
13 would have had a fighting chance. In a very real sense,  
14 folks, you don't have to pull a trigger to kill someone.  
15 Okay? You don't have to. You don't have to use your  
16 trigger finger to get blood on your hands. And just  
17 assuredly as the other six of the Texas Seven have the blood  
18 of Aubrey Hawkins on their hands, so does Patrick Murphy as  
19 he sits in the courtroom today. He has got Aubrey Hawkins'  
20 blood on his hands. And because he does and because he does  
21 have that blood on his hands, he's guilty, guilty of capital  
22 murder. Thank you, folks.

23 THE COURT: Mr. Sanchez?

24 MR. SANCHEZ: May it please the Court.

25 Good morning. I've got -- we have been given an hour to



1 give a summary of the evidence. I'm not going to take up  
2 this whole hour. I'm going to address the evidence in this  
3 case that pertains to Patrick Murphy, because that's the  
4 person that's on trial here. The State gets up here and  
5 they are going to try to whip up your emotion and point at  
6 the board. But let's remember and get back to the issue  
7 that Patrick Murphy is the only one that's on trial here  
8 today.

9                   When we spoke to all of you in voir dire,  
10 for some of you it was over a month ago, you all indicated  
11 to me and we all were confident that you could look at this  
12 case logically, without emotion, without sympathy, and  
13 decide it based only on the evidence. Every time you left  
14 this courtroom, the Judge would ask you, you decide this  
15 case from where? From the evidence that comes from the  
16 witness stand. Emotion and sympathy are not to play a part  
17 in that.

18                   And when we selected you to be jurors on  
19 this case, we were confident that all of you could do that.  
20 On voir dire we talked about the fact that when you look at  
21 a case, as jurors, your only job is to judge the State's  
22 evidence. As Mr. Shook put it during voir dire, it's like  
23 being an umpire. You call balls or strikes.

24                   Either they prove the case or they don't  
25 prove the case. You don't convict somebody solely because

1 the State wants you to do it. It's because they've  
2 presented the evidence that convinces you beyond a  
3 reasonable doubt. You don't convict somebody solely because  
4 a life was lost, only if they are guilty of what they allege  
5 that he's guilty of.

6 And that's really the issue that you are  
7 going to have to deal with when you are back there  
8 deliberating on this case. You are going to have to use  
9 that mental discipline that Mr. Wirskye talked about when he  
10 was speaking to some of you jurors, the mental discipline to  
11 distinguish between the acts of people.

12 The way the law works is not that you  
13 just throw out a net and whoever comes up is guilty. The  
14 saints and the sinners don't go all in the same net. The  
15 fact they put them all on the board next to each other  
16 doesn't mean they are all guilty of the same thing.

17 So you are going to have to decide, what  
18 is Patrick Murphy guilty of? You are going to have to  
19 decide, what was his intent in combination with his acts and  
20 decide what is he really guilty of?

21 Mr. Wirskye just indicated that if it  
22 wasn't for Patrick Murphy that Aubrey Hawkins would have a  
23 fighting chance. I would tell you that if they had listened  
24 to Patrick Murphy, Aubrey Hawkins and these other six would  
25 have never met. He was trying to prevent exactly what

1 happened.

2                   Abort and leave, leave, is the exact  
3 opposite of ambush. It's the exact opposite of attack.  
4 It's the exact opposite of get ready for him. His job was  
5 to warn them so they could leave. That was the plan. That  
6 was his mindset. That was his intent.

7                   So when you are looking at this case, you  
8 know, the State, I'm sure, won't argue with this. You know  
9 Patrick Murphy never fired a weapon. There's been no  
10 evidence that he ever fired a weapon. He never went back to  
11 the loading dock. He was never in that area. He never went  
12 inside the store. And he never had the intent that Aubrey  
13 Hawkins die that day.

14                   In order to find him guilty as a party,  
15 you have to find he acted with the desire and intent that  
16 Aubrey Hawkins die and that just wasn't the case. You can't  
17 convict somebody of something they did not want to happen.

18                   Under the rule of parties he would have  
19 to have assisted with the intent that Aubrey Hawkins be  
20 killed. His only intent that day was that the Oshman's be  
21 robbed and that they get out of there. That's why they had  
22 scanners, so they could have enough warning to leave. And  
23 the plan went wrong. Some people got greedy, I'm sure,  
24 inside that Oshman's and made them stay longer than they had  
25 to.

1 Just to clear up something about that,  
2 George Riyas was the one that said, we've got company. I  
3 think if you recall the testimony that those words didn't  
4 come from Mr. Murphy. He said, we've got company. And what  
5 did they do? They were trying to get out of there. As soon  
6 as they heard that, they were trying to leave. He was  
7 urgently telling them abort, leave, leave.

8 Now, this comes from his statement. This  
9 is really the only piece of evidence that you have that can  
10 show you Mr. Murphy's intent. The only tangible piece of  
11 evidence that shows you his intent that day. The State  
12 would have you speculate as to what his intent would be, but  
13 we don't convict people on speculation. The only evidence  
14 that you have is the evidence that they brought to you,  
15 which is the statement.

16 And they can't have it both ways. They  
17 can't use what's in the statement and say, believe this  
18 part, believe how the guns were set up and what he was doing  
19 in the car, but don't really believe about what he said  
20 about what his intent was.

21 Look at the statement. It makes sense.  
22 It was forthcoming. It was truthful. Everything in that  
23 statement is supported by the facts, even the fact that some  
24 ammo was left out in the back that he found out later when  
25 people were telling him after they got back together. If

1 you read that statement, he didn't know that an officer was  
2 shot until they got back together.

3 Does that show that somebody had the  
4 intent that someone die that day? Does that show that he  
5 anticipated that the plan would go awry like that?

6 Usually I don't refer to notes, but this  
7 is a very important case and I think it's important, again,  
8 that you focus on two areas. You have plenty of evidence in  
9 front of you of what happened back in the loading dock  
10 behind Oshman's. You may have been wondering, you know, I  
11 wonder why they didn't cross-examine more that witness that  
12 testified about DNA or testified about gunshot residue,  
13 trajectory of the bullets, diagrams of how the area looked  
14 back there, what the officer found. It's because that had  
15 nothing to do with Mr. Murphy. None of that evidence even  
16 connected him to that scene that day.

17 So don't think just because the questions  
18 weren't asked that somehow that was a sign or message that  
19 somehow we believe they have proven their case. No. We're  
20 not going to waste your time asking questions that don't  
21 mean anything, that are not relevant to Mr. Murphy.

22 As a matter of fact, I think you only  
23 heard from three witnesses that said anything about Mr.  
24 Murphy. So, again, how do we know that it wasn't  
25 anticipated or the intent was not there that someone should

1 die in the course of this robbery? Look at the State's own  
2 witnesses. Wes Ferris, the manager, he had the most direct  
3 contact of any of these witnesses with Mr. Rivas, who we all  
4 know was the one who was leading the operation. And he even  
5 told you, I got the feeling that he just wanted to get in,  
6 get the stuff, and leave, that they didn't want to hurt  
7 anybody.

8 I mean, he told you that himself. And  
9 this is the person who had the most direct contact with the  
10 person who was running the operation. And if the person who  
11 is running the operation has that intent, then how can you  
12 say it was planned that they were going to hurt somebody?  
13 How can you say that anybody anticipated someone would get  
14 hurt? George Rivas gave the impression to everybody and  
15 everybody got the feeling that they just wanted to leave.  
16 Even Mr. Simpson told you that.

17 Again, I'm going to have to talk about  
18 Mr. Murphy's statement. That right there is the most  
19 convincing evidence that Mr. Murphy had no intent while he  
20 was sitting in that vehicle, ready to warn them to leave,  
21 that Officer Hawkins was shot or hurt in any way. Look at  
22 the statement. Read it. You will get it back there. It's  
23 in evidence and you will be able to go over it as many times  
24 as you like and discuss it.

25 In here he talks about the fact that he

1 signed up for a robbery and only a robbery. He talks about  
2 the fact that he was listening to scanners, but only to tell  
3 them to get out. And when he did see Officer Hawkins, he  
4 said, leave, abort.

5 The State can try to characterize those  
6 statements as something different, but they are plain. You  
7 don't have to look it up in a dictionary to find out what  
8 that means. That means get out. Not only in here he shows  
9 there was urgency in telling them leave, leave. He said it  
10 twice because he wanted them out of there. And like I said  
11 before, if they would have listened to him, that's what  
12 would have happened.

13 Now, these cases are difficult because  
14 you are saying to yourself, well, this person decided to  
15 commit a robbery, so let's just find him guilty of capital  
16 murder. Well, that's not the way it works. I mean, we've  
17 all grown up, we've all grown up knowing that guilt by  
18 association is not a good thing. You can't just find  
19 somebody guilty by association. We've known that since we  
20 were young.

21 And the law recognizes that. The law  
22 recognizes that there's dangers in people being convicted  
23 for the acts of other people, if they didn't have the intent  
24 that those acts occur. So the law puts that protection in  
25 there.

1                   And they say to you, in order to find him  
2 guilty for the acts of another person, they have to prove to  
3 you that he had the intent and he aided in doing that, if he  
4 had the intent at all. Or they have to prove to you under  
5 the conspiracy theory that he anticipated that a human life  
6 would be taken or that a murder were to occur. And when you  
7 look at the statement, you know that's not the fact.

8                   And the most telling, the most telling  
9 part of this statement is not just the fact that he said,  
10 leave, abort, abort, is that you look back at the last page.  
11 At the last page at the very end he said, "Donald and I  
12 almost left that day." That right there should indicate to  
13 you that something happened that he didn't want to, that he  
14 didn't agree with, and that wasn't planned. Why would you  
15 want to leave the group if it happened just like you  
16 anticipated or thought it would happen?

17                   That's the most telling part of this  
18 whole statement is that he wanted to leave the group that  
19 day because he found out later that the officer was shot and  
20 that's not what he had planned for. That's not what he had  
21 signed up for. He had signed up only for a robbery. And  
22 that's what his whole intent was, a robbery. And if he's  
23 guilty of anything, that's what he's guilty of, a robbery.

24                   Now, let's look at the rest of the case  
25 that you saw. There were some -- you have the trajectory of



1 the bullets that they put here in front of you. You have  
2 all these guns that they are laying in front of you. And I  
3 just want to remind you that all these guns were not brought  
4 into the Oshman's. Most of these guns were the ones that  
5 were taken out of the Oshman's. So when they lay these in  
6 front of you remember that, remember that.

7 They brought in DNA evidence that shows  
8 it was Mr. Rivas and one of the other ones and Officer  
9 Hawkins' DNA that was found back there and in the cars.  
10 They brought you evidence -- I didn't hear any fingerprint  
11 evidence, but I would suggest to you that if they had,  
12 Mr. Murphy was never in the store, never fired a weapon,  
13 never in the Explorer.

14 They brought you evidence of how they  
15 arrested the other six, but, again, it had nothing to do  
16 with Mr. Murphy. The only thing is that it was peaceful and  
17 done without incident. When Mr. Murphy was talked to there  
18 at the Holiday Inn that day, they tried to make a big thing  
19 out of the fact that they may have been watching porn. I  
20 know you are not going to convict somebody of capital murder  
21 based on that.

22 But what you did learn is that he told  
23 Agent Harrell that he would have never done the Oshman's.  
24 And that some people had acted in a wrongful manner. And he  
25 was talking about the other six. Even then, he was still

1 showing you the disagreement and the lack of intent that he  
2 had that that would have happened. Even then he was saying.

3 So when you go back there, you would have  
4 to look at all the evidence. I want you to read the charge.  
5 I want you to read the charge and look at it logically,  
6 without emotion, and decide has the State proven to me his  
7 intent or his anticipation. Because that's what it all  
8 comes down to. What happened behind the store and what was  
9 happening in that car where Mr. Murphy was sitting and what  
10 was going on in his mind, that's basically the whole issue.  
11 That's basically all your deliberations should be about,  
12 because that's the only way that the State can get you to  
13 where they want to get you. That's the only way

14 But you can't get to it. They have to  
15 prove it to you beyond a reasonable doubt. You know, we  
16 talked about these concepts of beyond a reasonable doubt and  
17 holding the State to their burden and that that's the law.  
18 And you all took an oath to follow that law. Well, that law  
19 only means something and those concepts only mean something,  
20 if you uphold them. That's the only way they are going to  
21 work.

22 That's the only way the State will ever  
23 have to prove their case beyond a reasonable doubt is when a  
24 jury requires them to do so. And we know that you are going  
25 to do that.

1                   So I want you to go back there and look  
2 at all the evidence that pertains to Mr. Murphy. You have  
3 got a lot of evidence about other people here. Evidence  
4 that pertains to Mr. Murphy and his intent and his  
5 anticipation that he had down there. And, really, the only  
6 evidence that you are going to have are the witnesses that  
7 talked to him and his statement.

8                   And I think once you look at that, once  
9 you honestly look in your heart and look at the facts of  
10 this case as it applies to Mr. Murphy, the most you can find  
11 him guilty of is aggravated robbery, because he never wanted  
12 it to happen that way.

13                   Deliberations should be thorough. You  
14 should talk about things, read the charge more than once, if  
15 you have to, so you understand how to apply the law. It can  
16 be a little confusing, even for us who are explaining it to  
17 you. Read the charge.

18                   And your verdict must be unanimous. All  
19 twelve of you must reach an agreement as to a verdict. But  
20 it's also your verdict, a true verdict rendered. It's a  
21 verdict that you want to give. You don't compromise on  
22 verdicts. You don't vote a certain way, just because  
23 somebody else wants you to or because you want to go home at  
24 5:00 or you want to leave at a certain time. But it's a  
25 true verdict.

1 I want you to go back there and look at  
2 this evidence logically, look at the actual intent of Mr.  
3 Murphy, and what he actually anticipated, and you will find  
4 him not guilty of capital murder.

5 THE COURT: Mr. Shook?

6 MR. SHOOK: May it please the Court.  
7 Members of the jury. Back on Christmas Eve of 2000 dark  
8 forces descended upon that Oshman's. There were seven  
9 outlaws that went out there. And the defense may want you  
10 to ignore those six other outlaws and their actions so you  
11 can't associate them with Mr. Murphy, but you can't do that,  
12 you see, because they were in this together. They were a  
13 gang, an outlaw gang. They were a team and they chose to  
14 commit a crime which required all seven of them acting  
15 together as a team.

16 And now you realize why we talked so long  
17 on voir dire with each of you about the law of parties.  
18 Naturally, when we first spoke to you about capital murder,  
19 the first examples that you think of, as anyone would, is  
20 someone who is an actual triggerman.

21 But when we talk about it further,  
22 sometimes crimes are committed with more than one  
23 individual. Sometimes you have to have groups of  
24 individuals to commit crimes. And that's why we have this  
25 law of parties. That's the logic behind it. And you all

1 agreed with that.

2 Now, we used some simple examples back at  
3 that time and we asked you some openended questions and each  
4 of you came up with some good examples. We talked about how  
5 a person's intent would be important, how actively involved  
6 they were, that sort of thing.

7 If we could have given you the details of  
8 this crime, then I have no doubt at all that all of you  
9 would have said, yes, obviously, that's the kind of case  
10 someone should be prosecuted for capital murder as a party.

11 This kind of case is a textbook example  
12 as to why we have the law, because the law seeks to deter  
13 gangs from committing these types of crimes. The law  
14 doesn't allow criminals to say king's X, you can't touch me.  
15 I didn't pull the actual trigger. I was just there helping  
16 this thing. You can't do that. The law doesn't protect the  
17 criminal that way. You have to be held responsible, you  
18 have to be held accountable, because we want to deter these  
19 types of crimes.

20 So Patrick Murphy can't hide from the  
21 fact that he was out front, giving instructions, giving  
22 warnings, with his AR-15. He can't hide from that. He  
23 can't hide from the law. There's only one just verdict in  
24 this case.

25 The instructions are quite clear in the

1 charge. You have one lesser included offense, but you don't  
2 get to that. And Judge Cunningham is quite clear. Only if  
3 you have a reasonable doubt about capital murder, acquit the  
4 defendant of capital murder, and proceed to consider whether  
5 the defendant is guilty of a lesser included offense of  
6 aggravated robbery. And, as Mr. Wirskey said, you will  
7 never get to that particular issue, because the evidence is  
8 so overwhelming of his guilt.

9 Mr. Murphy's intent is clear in this  
10 case. At this stage of the crime -- of the case, we only  
11 have to prove that he should have anticipated. He doesn't  
12 even have to have the intent of someone to die to be found  
13 guilty of capital murder. But, folks, I think it's clear  
14 that he did have that anticipation, as Mr. Wirskey pointed  
15 out, with the overwhelming evidence we have.

16 The planning that went into it, the fact  
17 that they had these guns, the very fact that their goal was  
18 to obtain guns, as Mr. Murphy says in his statement, we  
19 wanted to increase our arsenal. We wanted a wider range of  
20 weaponry. That's their goal. They're anticipating violence  
21 the whole time. They wanted money and they wanted guns and  
22 ammunition.

23 And not to sell these guns. We know that  
24 because they kept every one of them. They, in fact, took  
25 Officer Hawkins' gun. That shows you their intent. These

1 are the people he decides to associate with. They murder  
2 him, they are in a hurry, but they take the time to take  
3 this gun out of his holster, as if they needed another  
4 weapon. Why? It shows their intent. Did they want a  
5 trophy? They want to brag about what they had done back  
6 behind the Oshman's?

7 But these are the people that Patrick  
8 Murphy associates with. See, he stays with them. Defense  
9 counsel says, well, he said in his statement, we almost left  
10 that day. Well, they didn't. They didn't leave. He  
11 stayed. He went to Colorado. He partied at the campsite  
12 with them. He was all over the campgrounds with them. He's  
13 driving in and out with Donald Newbury. And when he does  
14 leave, he stays with Mr. Newbury and they have 12 loaded  
15 weapons with extra ammunition in that hotel room. That  
16 tells you about his intent and what he anticipated.

17 He wasn't so upset that he ran from this  
18 gang, that he put down his weapons and couldn't believe what  
19 they had done behind the Oshman's. No, he's still with  
20 them. And it shows what his attitude is. He knows he's  
21 surrounded by the police when they contact him the second  
22 time. What are you doing? Watching some porn. That shows  
23 that outlaw attitude.

24 And, of course, when they can get the  
25 drop on someone, when they have a lookout who can notify

1 them that the police have arrived, when they can get the  
2 drop and outnumber Officer Hawkins seven to one, they are  
3 real brave then. They can surround him and they can kill  
4 him.

5 But when it's an even fight, when police  
6 officers know they are there and they have weapons, also,  
7 and they are ready, you don't see them come out of that  
8 hotel room in a fight. Eventually they just give up and  
9 they hold hands and walk down the hall, because it's a fair  
10 fight then. They don't have the drop on those police  
11 officers. They are cowards, they are outlaws, and they are  
12 cowards.

13 The evidence shows that they put a lot of  
14 thought. They weren't just driving down the highway and  
15 decided let's hit that Oshman's. They cased it, they looked  
16 at it, they weighed the pros and cons. Patrick Murphy was  
17 concerned. I mean, legitimately so. All these people, you  
18 know, they put a lot of thought into it, but this plan was  
19 destined to fail. When you are going to rob a store that  
20 large on Christmas Eve with that many employees, the chances  
21 of something going wrong are astronomical.

22 All those young kids in there, don't you  
23 think one might panic when you have these guys running  
24 around with guns? You don't think the police might be  
25 coming by? You don't think people -- exactly what happened,



1 someone was going to pick them up and they notified the  
2 police when they see something strange going on? You don't  
3 think the police are going to respond and try to stop  
4 something?

5 And that's why you have Patrick Murphy  
6 out here. He can't hide from the fact that he is not behind  
7 the back of the store and avoid a conviction in this case,  
8 because he served a very important role. He was their  
9 guardian angel. Their guardian angel.

10 And as Mr. Wirsky said, but for their  
11 actions, Aubrey Hawkins may have been alive. Perhaps he  
12 could have surprised George Rivas back there. Perhaps he  
13 may have seen them loading that equipment up, knowing  
14 something was wrong, been about to back off, summon help,  
15 wait.

16 But Patrick Murphy allowed them to know  
17 that Aubrey Hawkins was coming and that allowed them to set  
18 up an ambush. And that's all that was. The facts clearly  
19 show that. We know that from the physical evidence. We  
20 know that Officer Hawkins could only get his hand up in time  
21 to defend himself before he was shot.

22 We know from the testimony from the  
23 people at the Oshman's and Mr. Washington, who was in those  
24 apartments, that the gunfire when it began, began  
25 immediately and it was rapid and it was continuous.

1                   And you know from these trajectories that  
2     it was all around that car, coming in from every angle. And  
3     you know it was close, very close. This shot Mr. Spence  
4     says was probably six inches, six inches.

5                   He was surrounded and they ambushed him.  
6     They lured him in. And the only reason they were able to do  
7     that is because of him. You can call him all kinds of  
8     things. He was their lookout, he was their guardian angel.

9                   I'm reminded, you know, this year we've  
10    had troops over in Iraq fighting and we saw it on the news  
11    all the time. They talk about the guys that are on the  
12    ground.

13                  MR. SANCHEZ: I'll have to object to  
14    arguing outside the record.

15                  THE COURT: Overruled at this time. Be  
16    careful, Mr. Shook.

17                  MR. SHOOK: Air controller, the guys that  
18    are out there and can target our bombs. They put the laser  
19    on the individual, the air, the building, whatever. And  
20    that allows airplanes to come in, the precision bombing.  
21    That's what Mr. Murphy is. He allows them, he lets them  
22    know there's a police officer here. He gives them details.  
23    He's going out front. He's coming around back.

24                  And he can say all he wants about abort.  
25    I know the defense counsel didn't address the other things

1 he says in the confession, about initiating a firefight.  
2 And that tells you all you need to know. He didn't shoot  
3 back behind that Oshman's because he was never given the  
4 chance. He was never given that opportunity. We know that  
5 from what he said in his confession and what he told  
6 Sergeant Matt Harrell. I was set up to do damage from  
7 behind with the AR-15.

8 Had Aubrey Hawkins stopped up front and  
9 some confrontation taken place at the front of that  
10 Oshman's, does anyone doubt what Patrick Murphy would have  
11 done then? That was his role. Set up to do damage from  
12 behind in case of a standoff. That's why he was out there.  
13 One of the most trusted positions they had in this crime.  
14 They had to depend on someone who could do that, who had the  
15 will to do that, and that was Patrick Murphy.

16 These seven acted as a team. And they  
17 were responsible. They said, we cast a wide net. We bring  
18 up sinners and saints. I don't think there's any saints in  
19 that group, no saints at all. They're outlaws.

20 The evidence has been overwhelming. We  
21 appreciate your patience as we put it on painstakingly.  
22 It's important that as a jury that you get the full picture  
23 of what happened out there and that's why we put on all the  
24 evidence. Sometimes it takes time and we appreciate your  
25 patience.

1 But once that picture is clear, it  
2 clearly paints this man guilty. We didn't need his  
3 confession, necessarily, because you had Wes Ferris'  
4 testimony, who told you that what George Rivas said was, if  
5 we shoot one of you, we're going to kill all of you. What  
6 does that tell you about their planning and anticipation of  
7 violence? Obviously, that was talked among them all, the  
8 threats of killing everyone in that store, if they had to.

9 You also know from his testimony that he  
10 heard someone outside, Patrick Murphy, giving warnings. The  
11 police are tied up on Highway 183. He knew there was  
12 communication going on. And then finally, yes, you have got  
13 company. And they hurried up and they went outside and the  
14 shots took place.

15 From circumstantial evidence alone, you  
16 can find Patrick Murphy guilty. But his confession shows  
17 his true intent, shows his true intent.

18 You know, this day back on Christmas Eve,  
19 Aubrey Hawkins was on the job. Most fathers of  
20 nine-year-old boys were home on Christmas Eve having dinner  
21 with their families, perhaps reading a story to their  
22 children, putting together a bicycle, some other toys.

23 But Aubrey Hawkins chose to be a police  
24 officer. And on that day, that evening, he was out alone  
25 and he was in the cold and he was in the wet and he was

1 outnumbered and he was ambushed.

2 But his killers were hunted down and they  
3 were caught and captured and they are being brought back to  
4 Texas for some justice. You have been given the evidence,  
5 the overwhelming evidence, to convict Patrick Murphy of the  
6 only crime he's guilty of and that is capital murder. And  
7 we'll ask you to do that. Thank you.

8 THE COURT: Members of the jury, it's now  
9 time for you to retire and consider your verdict. Go with  
10 the Sheriff.

11 [Jury out]

12 THE COURT: Let the record reflect the  
13 jury has been retired to deliberate at 10:10 a.m. Do I have  
14 a motion for the parties to excuse Mr. Daigle as the  
15 alternate in this matter?

16 MR. SHOOK: Yes, Your Honor.

17 MS. BUSBEE: Yes.

18 THE COURT: Sheriff, put Mr. Daigle in my  
19 office. If he wishes to visit with you, he may, or he may  
20 not.

21 [Jury in]

22 THE COURT: Please be seated. Mr.  
23 Murphy, if you will remain standing. Let the record reflect  
24 the jury has reached a verdict at approximately 11:20 a.m.  
25 and that the foreman is Mr. Scott Albright; is that correct?

1 FOREMAN: Yes, sir.

2 THE COURT: Has your jury reached a  
3 verdict?

4 FOREMAN: Yes, we have.

5 THE COURT: Would you please read your  
6 verdict.

7 FOREMAN: "We, the jury, find the  
8 defendant guilty of capital murder as charged in the  
9 indictment."

10 THE COURT: Thank you, sir. Is that each  
11 and every one of your individual verdicts, if you would,  
12 please signify by raising your right hand. We have a  
13 unanimous verdict. Thank you, Mr. Albright. You may be  
14 seated.

15 Members of the jury, as you already know,  
16 this is the first phase of this trial and then the  
17 punishment phase will now begin. We never know exactly how  
18 long a jury might deliberate and it's for planning purposes  
19 we try to accommodate a lot of people in this matter.

20 The punishment phase shall not begin in  
21 this trial until Monday morning at 9:30. So, but once  
22 again, I have to allow, anticipate enough time for a jury to  
23 have and don't know exactly how long the testimony will be  
24 and we have a lot of people from out of town. So it's one  
25 of those things that I know you are disappointed not to go

1 straight into the punishment phase, but as far as  
2 anticipation on the witnesses and when to be here, we've got  
3 everybody scheduled for Monday morning.

4 So we're going to be in recess on this  
5 trial until Monday morning at 9:30. All the previous  
6 instructions still apply. No media of any type, no  
7 Internet, no newspaper, no radio, no friends, no spouses.  
8 And you are halfway through this thing. You will have to  
9 make it another week.

10 So you can do whatever you want to  
11 tomorrow. If you want to, you can go to work, if your  
12 employer thinks that you are going to be there, you can  
13 do whatever you want to do. But as far as this phase of the  
14 trial, this is behind you. And we'll start the second phase  
15 of the trial Monday morning.

16 So if you would, Sheriff, would you  
17 please retrieve the verdict form from Mr. Albright and the  
18 Court shall receive this verdict.

19 Mr. Shook, anything else today in front  
20 of this jury?

21 MR. SHOOK: No, sir.

22 THE COURT: Ms. Busbee?

23 MS. BUSBEE: No, Your Honor.

24 THE COURT: Members of the jury, we stand  
25 in recess until Monday morning at 9:30. The Sheriff will

1 give you whatever instructions to be here and ready to go to  
2 work at 9:30. Once again, everything you need to learn  
3 about this case comes from where? The witness stand. I'm a  
4 broken record, but that's how important it really is. So  
5 we'll let you retire and see you Monday morning at 9:30.

6 [Jury out]

7 [End of Volume]



1 STATE OF TEXAS \*

2 COUNTY OF DALLAS \*

3 I, NANCY BREWER, Official Court Reporter for the 283rd  
4 Judicial District Court, do hereby certify that the above  
5 and foregoing constitutes a true and correct transcription  
6 of all portions of evidence and other proceedings requested  
7 in writing by counsel for the parties to be included in this  
8 volume of the Reporter's Record, in the above-styled and  
9 numbered cause, all of which occurred in open court or in  
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

13  
14  
15 Nancy Brewer  
16 NANCY BREWER, CSR, NO. 5759  
17 Expiration Date: 12-31-04  
18 Official Reporter, 283rd JDC  
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23  
24  
25

74851

REPORTER'S RECORD

VOLUME 45 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

\*\*\*\*\*

JURY TRIAL

\*\*\*\*\*

**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

On the 17 day of November, 2003, part one, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Vickers L. Cunningham, Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

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17	ST.538	PHOTO	112	112	45
18	ST.539	PHOTO	112	112	45
19	ST.540	PHOTO	112	112	45
20	ST.541	PHOTO	112	112	45
21	ST.542	PHOTO	112	112	45
22	ST.543	DIAGRAM	113	113	45
23	ST.544	DIAGRAM	113	113	45
24	ST.545	PHOTO	112	112	45
25	ST.547	PHOTO	112	112	45

26

1	ST.548	PHOTO	112	112	45
2	ST.549	PHOTO	112	112	45
3	ST.550	PHOTO	112	112	45
4	ST.582	POSTER	113	113	45
5	ST.824	PEN PACKET, NEWBURY	14	14	45
6	ST.825	PEN PACKET, NEWBURY	14	14	45
7	ST.826	PEN PACKET, NEWBURY	14	14	45
8	ST.827	PEN PACKET, HALPRIN	14	14	45
9	ST.828	PEN PACKET, RODRIGUEZ	14	14	45
10					
11	ST.829	PEN PACKET, GARCIA	14	14	45
12	ST.830	PEN PACKET, MURPHY	14	14	45
13	ST.979	MURPHY'S STMT.	24	24	45
14	ST.985	WALLET	151	151 (ALL)	45
15	ST.990	PHOTO OF DIAGRAM	44	44	45
16	ST.991	PHOTO, GRIESER'S APARTMENT	44	44	45
17					
18	ST.992	PHOTO, GRIESER'S APARTMENT	44	44	45
19	ST.993	PHOTO, GRIESER'S APARTMENT	44	44	45
20					
21	ST.994	PHOTO, GRIESER'S APARTMENT	44	44	45
22	ST.995	PHOTO, GRIESER'S APARTMENT	44	44	45
23					
24	ST.996	PHOTO, GRIESER'S APARTMENT	44	44	45
25	ST.997	PHOTO, GRIESER'S APARTMENT	44	44	45

1	ST.998	PHOTO, GRIESER'S APARTMENT	44	44	45
2					
3	ST.999	PHOTO, GRIESER'S APARTMENT	44	44	45
4	ST.1000	PHOTO, GRIESER'S APARTMENT	44	44	45
5					
6	ST.1001	PHOTO, GRIESER'S APARTMENT	44	44	45
7	ST.1002	PHOTO, GRIESER'S APARTMENT	44	44	45
8					
9	ST.1003	PHOTO, GRIESER'S APARTMENT	44	44	45
10	ST.1004	PHOTO, GRIESER'S APARTMENT	44	44	45
11					
12	ST.1005	PHOTO, GRIESER'S APARTMENT	44	44	45
13	ST.1006	PHOTO, GRIESER'S APARTMENT	44	44	45
14					
15	ST.1007	PHOTO, GRIESER'S APARTMENT	44	44	45
16	ST.1008	PHOTO, GRIESER'S APARTMENT	44	44	45
17	ST.1009	DIAGRAM, APARTMENT	78	78	45
18	ST.1013	DNA REPORT	101	101	45
19	ST.1025	LETTER TO BECKA	30	30 (REC)	45
20	ST.1026	LETTER TO BECKA	30	30 (REC)	45
21	ST.1027	AERIAL PHOTO	46	46	45
22	ST.1028	AERIAL PHOTO	46	46	45
23	ST.1029	AERIAL PHOTO	46	46	45
24					
25					



P R O C E E D I N G S

THE COURT: A Motion to Quash Subpoena issued for Ms. Holly Becka has been issued or filed on the subpoena that was issued by the State. And Mr. Paul Watler, who was here last week appearing on another subpoena that the Court did quash for Mr. Thorpe, is here on behalf of Ms. Becka.

Mr. Watler, would you like to state for the record very briefly the nature of the issue and the subpoena?

MR. WATLER: Yes, Your Honor. We're here on the Motion to Quash the subpoena issued to Ms. Becka and under the Coleman case we're relying on that case for the proposition that the State has the burden to show that any testimony that they would elicit from Ms. Becka would be both favorable to the State and material to the presentation of the State's case.

THE COURT: Mr. Shook, how is it favorable?

MR. SHOOK: Judge, the -- I can get these marked, if you want to review them. Judge, I'll show you what has been marked 1025 and 1026. To summarize, I believe the many parts of the letters more or less, is Mr. Murphy reciting his personal history, which includes his criminal history, including juvenile convictions, arrests, different

1 crimes such as that, and also his family background and  
2 personal history which would be very relevant to the jury.

3 THE COURT: As statements admitted  
4 against interest, obviously among other exceptions. And are  
5 you calling Ms. Becka for the purpose of --

6 MR. SHOOK: Identifying the letters that  
7 they were sent to her. And my plan at this time, Judge, is  
8 simply have her identify them and enter them for record  
9 purposes in front of the jury. And then when it becomes  
10 more relevant in the trial, publish them, perhaps, at that  
11 time.

12 THE COURT: And you are not asking for  
13 any communications from Ms. Becka, just simply the fact that  
14 she can authenticate having received these letters?

15 MR. SHOOK: I think that the letters  
16 speak for themselves.

17 THE COURT: And the Morning News'  
18 position on a noncommunication issue?

19 MR. WATLER: I think that would be in the  
20 Court's discretion whether the State has met its burden to  
21 show up the elements under the Coleman case.

22 THE COURT: They certainly have. I'll  
23 deny your motion to quash the subpoena. And Ms. Becka may  
24 testify.

25 [Jury in]

1 THE COURT: Good morning. Please be  
2 seated. Mr. Shook, is the State ready on punishment?

3 MR. SHOOK: Yes, Your Honor.

4 THE COURT: Defense?

5 MS. BUSBEE: We're ready, Your Honor.

6 THE COURT: Opening remarks?

7 MR. SHOOK: Yes, Your Honor. May it  
8 please the Court. Members of the jury, as you will recall  
9 from our discussions with you during jury selection, there  
10 are two parts to a capital murder trial. The second part is  
11 the punishment phase in which the jury is allowed to hear  
12 evidence that was not admissible in the guilt/innocence  
13 stage.

14 That evidence can consist of background  
15 evidence, a person's criminal history, if they have been  
16 convicted of crimes in the past, what types of crimes, the  
17 sentence that was imposed, and if the witnesses are  
18 available, the actual fact witnesses to those cases.

19 This will be the type of evidence that you  
20 will be hearing in this particular portion of this trial.  
21 The evidence will show, in fact, that all these men were  
22 obviously convicted. That's why they were in the Connally  
23 Unit. You will hear evidence that George Rivas was serving  
24 18 life sentences for the crimes of burglary, aggravated  
25 robbery, and kidnapping from a string of robberies out of

1 the El Paso area. He had been sentenced in 1994 and 1995.

2 Michael Rodriguez was serving a capital  
3 life sentence from San Antonio. Donald Newbury had been to  
4 the penitentiary three times, all for aggravated robbery and  
5 most recently for serving a 99-year sentence conviction out  
6 of Travis County. Joseph Garcia was serving a 50-year  
7 sentence out of San Antonio for murder. Randy Halprin was  
8 serving a 30-year sentence for child abuse out of Tarrant  
9 County. Larry Harper was serving three 50-year sentences  
10 for sexual assault out of El Paso.

11 And the defendant, Patrick Murphy, was  
12 serving a 50-year sentence for aggravated sexual assault out  
13 of a conviction out of Dallas County that he received in  
14 1984. There's also evidence that shows that he was placed  
15 on probation in 1984 for the offense of burglary of a  
16 building and that probation was revoked and he was sentenced  
17 to six years in prison.

18 The evidence will show that back in 1984,  
19 February 23rd of 1984, Patrick Murphy committed the offense  
20 of burglary of a building. He was caught in a grocery store  
21 in Balch Springs, Texas. He was arrested at that time with  
22 his stepbrother, his younger stepbrother. He was arrested  
23 and he confessed to that crime. He was placed on probation  
24 on March 19, 1984.

25 Three days later he committed rape. The

1 evidence will show that he knew the victim. You will hear  
2 from that victim, Jeannie Kay. She will tell you that she  
3 first met the defendant as she was growing up in Irving and  
4 attending Irving High School, that they were in an ROTC  
5 class together, that they even had one date together, went  
6 to a football game, that they had the same friends and  
7 acquaintances and socialized together. And she was very  
8 familiar with him in her high school days.

9                   Also after high school, she was invited  
10 to his wedding and attended that. Lost track of him. And  
11 then in early 1984 he called her, called on the phone, and  
12 identified himself and began calling her once a week or so.  
13 He wanted to know if she had a boyfriend. She did. And  
14 they talked about just things in general.

15                   On one occasion he came over to her  
16 sister's house and met with her and talked with her. Then  
17 on March 20th, she was living in Irving with her mother in  
18 an apartment with her three-year old son, single mother,  
19 working two jobs.

20                   Patrick Murphy showed up with her  
21 brother-in-law and her sister. The reason for coming over  
22 to the apartment at that time was to borrow a book. It was  
23 this opportunity that he had to see her apartment and see  
24 the layout.

25                   In fact, he had been arrested and placed

1 on probation just on the 19th of March. He had gone and  
2 called two high school friends, Bill Brown and the victim's  
3 brother-in-law, Donny Kearney, and asked them if he could  
4 stay at their apartment for a few days.

5 Their apartment was located just half a  
6 mile from where the victim was staying. He stayed there.  
7 And the evidence will show that on the 21st of March in the  
8 evening hours he spent time with Donald Kearney. They went  
9 to a 7-Eleven. They played video games.

10 When he got back to the apartment, he  
11 began to drink beer. At some point in time Mr. Kearney went  
12 to bed, but the other roommate came home, Bill Brown. He  
13 continued to have a few beers with the defendant. Both of  
14 the gentlemen had buck knives and they laid them out on the  
15 counter before they went to bed.

16 They will be able to tell you that Mr.  
17 Murphy that evening was dressed in a checkered shirt and  
18 baggy pants. And he talked about the victim and his desires  
19 for her, nothing that alarmed them at that time. Mr. Brown  
20 went to bed.

21 Both will tell you and can testify that  
22 that apartment was small and at approximately 3:00 to 3:30  
23 in the morning they heard the door open and close. They  
24 heard it again open and close, the front door, at  
25 approximately 5:30 in the morning. They saw Mr. Murphy. He

1 was still dressed in the plaid shirt and he appeared to be  
2 tired. Said he had been up all night.

3 You will hear from the victim who will  
4 tell you that on the night of March 21st she got home around  
5 9:00 p.m. She was tired. She gave her son a bath. She put  
6 him to bed. Her mother was still at work. She was out.  
7 Her boyfriend came over at 10:00 p.m. and stayed for about  
8 an hour and left. She then went to bed.

9 She slept on the couch. She was in a  
10 nightgown. She had her alarm set for 5:00 in the morning so  
11 she could go to her second job. She did not awaken when her  
12 mother came home that evening.

13 At approximately 4:45 in the morning she  
14 awakened, saw a man's silhouette by the front window inside  
15 the apartment. She was frightened. She was frightened for  
16 her life, her son's life, and her mother's. He had a towel  
17 wrapped around his face and he was wearing a checkered shirt  
18 and baggy pants.

19 She didn't say anything. She wanted to  
20 pretend she was asleep and she watched him move across the  
21 room and unplug the alarm and the lamp and then come over to  
22 her and stand over her. He then bent down, covered her  
23 eyes, and put a knife to her throat. Told her to be quiet  
24 and cooperate or something might happen.

25 She recognized that voice immediately as

1 Patrick Murphy, the same person she had known in high  
2 school, and had seen the previous day at her house. He then  
3 took a pillow from under her head, took the pillow case off,  
4 and made her put the pillow case over her head, so she could  
5 not see him.

6 And he turned her over and used the towel  
7 to bind her hands. He then had her get off the couch. She  
8 could hear him then take off his clothes. First he laid her  
9 down, took the knife out, and stroked the knife down her  
10 chin, her neck, her body. He then took the knife and cut  
11 the straps of her nightgown, took her nightgown off. When  
12 she was naked, he took the knife again and stroked it down  
13 her chin, her throat, her chest, and under her breasts.

14 At that point in time he forced her off  
15 the couch. She stumbled, touched him. He told her not to  
16 touch him anymore. He told her, you can get to it better  
17 here. And with the pillow case on her head, forced her to  
18 have oral sex with him, the entire time with the knife to  
19 her back.

20 He then placed her on the back of that  
21 couch and raped her with a knife to her at all times. After  
22 the rape he gagged her. He tied her hands more tightly. He  
23 told her that he would cover her with a blanket and when he  
24 was gone, she could call out for help. He even gave her a  
25 glass and told her, if you can't wake your mom up, throw



1 this glass.

2 She knew the entire time it was Patrick  
3 Murphy, recognizing his voice. He left the front of the  
4 apartment. As soon as he was gone, she was able to get up,  
5 go down the hallway, and awaken her mother and call the  
6 police.

7 The police came immediately. She was  
8 taken down to the station. She talked with Detective Dix  
9 (phonetic) and told her, yes, I know who did this. I  
10 recognized the voice. She then went to the hospital and was  
11 given a rape exam. Mr. Murphy was arrested and put in a  
12 lineup, a voice identification lineup, at the Dallas County  
13 Jail. And when she had him repeat the threats he made, she  
14 recognized his voice immediately. A case was filed on him.

15 DNA evidence was not as advanced at that  
16 point in time. In fact, he was labeled what is a  
17 nonsecretor that didn't show numbers, blood numbers, blood  
18 types, that could link him to the crime. However, since  
19 that time DNA has advanced. You will hear about that  
20 evidence and it links him to one in 36 trillion,  
21 astronomical numbers as a person that deposited sperm in the  
22 victim that night, that morning.

23 He was tried and convicted. He was  
24 sentenced to 50 years. You will hear evidence that he  
25 eventually was transferred to the Connally Unit where he

1 worked in the maintenance department with these men. All  
2 these men worked in the maintenance department, except  
3 Michael Rodriguez.

4 Mr. Murphy's job was a carpenter. You  
5 will learn that the prison runs much like a city, that there  
6 are craftsmen that are employed there. There are lock  
7 techs, electricians, carpenters, plumbers, and they run the  
8 prison and they have inmates who run and perform these jobs  
9 and occupations under them.

10 You will learn that these are the more  
11 desired occupations to have in a prison. And Mr. Murphy did  
12 well at his occupation and was considered a skilled  
13 craftsman.

14 You will also learn that he participated  
15 in the largest breakout in prison history with these seven  
16 men. That on December 13th he got together and in an  
17 organized fashion, much like the same organized fashion that  
18 the Oshman's crime was carried out, they selectively took  
19 down these craftsmen, these guards that worked there.

20 They decided as their plan unfolded that  
21 it would occur at lunchtime after the craftsmen had all gone  
22 to lunch. The seven stayed behind. They were working to  
23 seal the warehouse floor and there was one supervisor,  
24 Patrick Moczygemba. He was to take them to lunch later in  
25 the day.

1                   They lured him into the back of the  
2 warehouse. He was then hit over the head with a heavy  
3 object, knocking him unconscious. When he awoke, he was  
4 wrestling and fighting with George Rivas and the others.  
5 Shanks, homemade knives, were then placed to his throat and  
6 his life was threatened. He was then bound and gagged and  
7 dragged to a utility room, an electrical room. And he then  
8 heard as the other craftsmen would come in, bound and  
9 gagged. All in all, 17 men would be placed in that room.  
10 Death threats would be made to them. They would be  
11 threatened and knives placed in their ears.

12                   Eventually George Rivas, along with Larry  
13 Harper, were dressed as civilians. They were called out to  
14 a back gate, the back gate where trucks made deliveries in  
15 and out, saying that they were coming out to install some  
16 cameras. They then proceeded to that back gate, along with  
17 Patrick Murphy and Donald Newbury, who were posing as  
18 inmates to help the craftsmen.

19                   They made their way to the back gate.  
20 Mr. Murphy, Mr. Newbury, and Mr. Harper overpowered the  
21 guard at the building there. Mr. Rivas went up into the  
22 guard tower picket and was able to overpower that guard, and  
23 then they made their escape.

24                   You would learn that they go to Houston,  
25 Texas, where they rob an Auto Zone. Mr. Newbury, Mr. Rivas,

1 pose as customers, they wait until closing time, and then  
2 pull guns on the three employees. They were in radio  
3 communication with persons outside. The manager knows it's  
4 no use trying to get away because there's men outside.  
5 Several thousand dollars are taken from the Auto Zone.

6 The car is recovered by the employees  
7 just down the street and there are earplugs found and  
8 recovered from that car. DNA tests are done. And those DNA  
9 tests will show and we'll link evidence back to Mr. Murphy,  
10 again, in astronomical numbers, linking him to that  
11 particular crime.

12 All this evidence is relevant and will  
13 prove the Special Issues, the State's contention of yes,  
14 yes, and no.

15 Your Honor, at this time we would offer  
16 State Exhibits 498, 824, 825, 826, 827, 828, 829, and 830.

17 MS. BUSBEE: Your Honor, I have had an  
18 opportunity to examine these and we have no objection.

19 THE COURT: Those State exhibits may be  
20 admitted.

21 MR. SHOOK: May I publish to the jury?

22 THE COURT: You may.

23 MR. SHOOK: Members of the jury, these  
24 are penitentiary packets, certified criminal judgments of  
25 these particular inmates.

1 State Exhibit 498 is the penitentiary  
2 packet of George Rivas. This is his photograph. It has the  
3 18 life sentences which include a burglary, which he was  
4 placed on probation July 6, 1989. There are also two  
5 separate trials, one taking place in 1994, one in 1995,  
6 involving aggravated robbery and kidnapping. The sentences  
7 were all life sentences. Probation was revoked for the  
8 burglary and he was sentenced to life in prison. Those were  
9 all out of El Paso, Texas.

10 State Exhibits 824, 825, and 826 are the  
11 penitentiary packets and convictions of Donald Newbury. He  
12 received three separate trips to the penitentiary. No. 824,  
13 which is the penitentiary packet in which he was convicted  
14 of aggravated robbery in 1981. Sentenced to ten years in  
15 the penitentiary. State Exhibit 825 is the penitentiary  
16 packet for a second trip to the penitentiary in April 1987,  
17 which he was sentenced to 15 years in the penitentiary.  
18 Both of those are out of Travis County for aggravated  
19 robbery.

20 And State Exhibit 826 is the penitentiary  
21 packet for a jury trial conviction that occurred April  
22 1st, 1998, out of Travis County in which he was sentenced to  
23 99 years for the crime of aggravated robbery.

24 No. 827 is the penitentiary packet for  
25 Randy Halprin. A conviction out of Tarrant County, May 7th,

1 1997. He pled guilty and received 30 years in prison for  
2 the felony offense of injury to a child.

3 State Exhibit 828 is the penitentiary  
4 packet of Michael Rodriguez. It is out of San Antonio.  
5 Shows he was convicted February 13, 1995, pled guilty, and  
6 received a capital life sentence. Shows that the actual  
7 crime was committed July 14, 1992.

8 Joseph Garcia, State Exhibit 829 is a  
9 felony conviction for the crime of murder out of San  
10 Antonio. Conviction date is November 8, 1996. It was a  
11 jury trial.

12 Finally, State Exhibit 830 is a  
13 penitentiary packet for Patrick Murphy. Shows that Mr.  
14 Murphy was first placed on probation, six-years' probation,  
15 for the felony offense of burglary of a building. And then  
16 he was convicted in a jury trial on November 2nd of 1984 and  
17 sentenced to 50 years in prison for the crime of aggravated  
18 sexual assault. His probation was revoked and he also  
19 served a sentence of six years for burglary of a building.

20 MR. WIRSKYE: State will call Deputy  
21 Graham.

22 TROY GRAHAM,  
23 having been duly sworn, was examined and testified as  
24 follows:

25 DIRECT EXAMINATION

1 BY MR. WIRSKYE:

2 Q. Sir, can you tell us your full name.

3 A. Troy Gene Graham.

4 Q. How are you currently employed?

5 A. Kaufman County Deputy Sheriff.

6 Q. How long have you been with Kaufman County?

7 A. It was a year Saturday.

8 Q. What do you do for Kaufman County?

9 A. Right now assigned as a training coordinator,  
10 background investigator for applicants and a crime  
11 prevention officer.

12 Q. Before you became a deputy in Kaufman County,  
13 were you in law enforcement?

14 A. Yes, sir, I was.

15 Q. Can you tell us about your prior law  
16 enforcement experience?

17 A. I spent 14 years with the City of Lancaster  
18 and then approximately -- well, 11 years with the City of  
19 Balch Springs. And at Lancaster I was patrol sergeant and  
20 Balch Springs I made patrol sergeant before I retired from  
21 the two.

22 Q. In February of 1984 were you a patrol officer  
23 for the City of Balch Springs?

24 A. Yes, sir, I was.

25 Q. Back in February of '84 did you arrest Patrick

1 Murphy for the felony offense of burglary of a building?

2 A. Yes, sir, I did.

3 Q. How many arrests do you think that you have  
4 made since that day in 1984?

5 A. Hundreds.

6 Q. When you make an arrest, do you do a report?

7 A. Yes, sir.

8 Q. And what is the purpose of doing a report?

9 A. Basically is to be able to refresh your memory  
10 for court purposes.

11 Q. And you have looked at the report that was  
12 generated in this case; is that right?

13 A. I have.

14 Q. To refresh your memory?

15 A. Yes, sir.

16 Q. Let me specifically turn your attention to  
17 February 23rd of 1984 at about 1:20 a.m. in the morning, and  
18 ask you if as a patrol officer for the City of Balch  
19 Springs, did you respond to a silent alarm at a supermarket?

20 A. Yes, sir, I did.

21 Q. And that was a Jordan's Supermarket on Peach  
22 Tree Road?

23 A. I believe it was 1701, if I'm not mistaken.

24 Q. Could you describe to the members of the jury  
25 kind of generally what that location is and that store?



1           A.       Basically, it's a strip mall, at the time  
2 maybe half a city block long and businesses on each side, as  
3 I recall, of the supermarket. And the only thing I can  
4 compare it to with today's supermarket would be like a  
5 Brookshires, not a normal mom-and-pop-type store, a little  
6 bit larger.

7           Q.       So a fairly large store?

8           A.       Correct.

9           Q.       And the silent alarm call, was that something  
10 that is common for patrol officers to answer those types of  
11 things?

12          A.       Yes, sir, it is, for businesses.

13          Q.       And that was your assignment that night or the  
14 call you answered that night?

15          A.       Yes, sir.

16          Q.       As you arrived at that scene, tell the members  
17 of the jury what you observed.

18          A.       When I pulled up to the front of the store,  
19 there was a broken -- and I cannot honestly remember if the  
20 plate glass doors or the window, but as I pulled up, there  
21 were two males trying to exit the business with the broken  
22 glass.

23                   And I immediately got out of my squad car  
24 and got my duty shotgun. And there was nowhere for them to  
25 go, but back in the store.

1 Q. And that's where they went?

2 A. Yes, sir, it was.

3 Q. What race were these two individuals?

4 A. White males, white.

5 Q. Once you saw this, what did you do next?

6 A. I secured the front of the building and waited  
7 on a backup, one of my backup officers.

8 Q. Did you have a backup officer that night?

9 A. Yes, sir.

10 Q. Who assisted you that night?

11 A. The one that -- there were more than one, but  
12 the one that comes to mind is Officer J. R. Patterson, who  
13 was a patrol officer with Balch Springs at the time.

14 Q. Once you got help at that store, what did  
15 y'all proceed to do?

16 A. Once it was secured inside and out, then we  
17 just started a little search inside the store, front to  
18 back, aisle to aisle.

19 Q. How long did this search last?

20 A. Well over an hour.

21 Q. At some point did you find something  
22 suspicious?

23 A. Yes, sir, we did.

24 Q. What was that?

25 A. The very back right-hand corner of the store,

1 I cannot recall if it was a bread rack or a potato chip  
2 rack, but it was just about eye level that you could see  
3 where the products had been pushed to one side. Some of it  
4 was stepped on and then a ceiling tile had like the dust had  
5 fell on the top of this counter.

6 Q. And I guess after an hour you had a pretty  
7 good chance to search the store?

8 A. Oh, exactly.

9 Q. Did you think they were in there at that  
10 point?

11 A. I knew they were. There was absolutely no  
12 other way out.

13 Q. Once you saw that ceiling tile ajar, what did  
14 you do?

15 A. Made verbal contact with the individuals in  
16 the attic of the store.

17 Q. Okay. Did you or another officer actually go  
18 up and get them or did they come down?

19 A. No. As I recall, they actually came down on  
20 their own.

21 Q. Two white males, one of which you later came  
22 to know as Patrick Murphy?

23 A. Yes, sir, that's correct.

24 Q. And another younger male that you later came  
25 to know was Patrick Murphy's half-brother, Allen Ray

1 Skinner; is that right?

2 A. Yes, sir.

3 Q. Once you had them in custody, did you take  
4 them back to the police department?

5 A. Yes, sir, we did.

6 Q. Were you able to search the two defendants?

7 A. I can't recall if I did specifically. Of  
8 course, they would have been searched at the store as well  
9 as a thorough search at the book-in area.

10 Q. Do you recall that Allen Ray Skinner was found  
11 with \$226 in his pocket?

12 A. Having reviewed the report, yes, sir, I do.

13 Q. Having reviewed the report, can you tell the  
14 members of the jury how Patrick Murphy and his stepbrother  
15 were dressed that morning?

16 A. I specifically remember as a result of the  
17 report they did have on camouflage clothing.

18 Q. In addition to the money, were you able to  
19 determine what, if anything, they were trying to get out of  
20 there with?

21 A. I think they had already made entry into the  
22 store and brought cigarettes and some other items, maybe  
23 razor blades or something to that effect, and stashed it  
24 outside before they entered the store the second time, at  
25 which time I had pulled up on the location, as I remember.

1 Q. By the time you get them back to the station,  
2 it's early in the morning; is that right?

3 A. Yes, sir.

4 Q. Were there any detectives on duty or anything  
5 like that?

6 A. No, they were not.

7 Q. Was it your policy in Balch Springs at that  
8 time that the arresting officers try to get a statement or  
9 confession from the individuals?

10 A. Absolutely, yes, sir.

11 Q. Indeed, is that what you tried to do that  
12 evening?

13 A. I did, yes, sir.

14 Q. You did get a written voluntary statement from  
15 Patrick Murphy?

16 A. Yes, sir, I did.

17 MR. WIRSKYE: Your Honor, may I approach  
18 the witness?

19 THE COURT: You may.

20 Q. (By Mr. Wirsbye) Deputy Graham, let me show  
21 you one page there that's marked for identification as  
22 State's No. 979. Do you recognize that as the voluntary  
23 statement that you took from Patrick Murphy that night?

24 A. Yes, sir.

25 Q. Are the Miranda warnings clear on the face of

1 the statement?

2 A. Yes, sir, they are.

3 Q. And you see his initials and his signature on  
4 the statement; is that right?

5 A. Yes, sir.

6 Q. And did he, in fact, waive his Miranda  
7 warnings and gave you a written statement of what happened  
8 that night; is that correct?

9 A. Exactly.

10 MR. WIRSKYE: Your Honor, we offer  
11 State's 979.

12 MS. BUSBEE: We've had an opportunity to  
13 take a look at that, Your Honor, and we have no objections.

14 THE COURT: State's 979 shall be  
15 admitted.

16 MR. WIRSKYE: Permission to publish for  
17 the members of the jury, Your Honor?

18 THE COURT: You may.

19 Q. (By Mr. Wirskye) Ladies and gentlemen, this  
20 is a one-page voluntary statement. It starts, "Date,  
21 2-23-84, place, Balch Springs Police Department, time  
22 started, 3:42 a.m.

23 "I, the undersigned, Patrick H. Murphy,  
24 Jr., am 22 years of age. My date and place of birth being  
25 the 3rd day of October, 1961, at Parkland Hospital, Dallas,

1 Texas. I now live at 11031 Martin Street, Balch Springs,  
2 Texas, 75180.

3 "Before answering any questions or making  
4 any statements, T. G. Graham, a person who has identified  
5 himself as a Balch Springs police officer, has duly warned  
6 and advised me of my rights." And we have the preprinted  
7 Miranda rights there.

8 The handwritten part of the statement  
9 reads as follows. "I walked up to the front window of the  
10 store with the piece of 600 MCM copper clad wire and struck  
11 the window three times to break it out. After breaking the  
12 window I ran around the south corner of the store and  
13 through the vacant field. This was about 12:30 a.m.  
14 where I met my brother Allen.

15 "We then walked around to Bruton and went  
16 down to Peach Tree to see if the police had arrived. They  
17 had not, so we went into the store, sacked two sacks of  
18 cigarettes and some lunchmeat. We left the building and  
19 came back in. Then we saw the police officer with a shotgun  
20 in his hand.

21 "We then went to the storeroom and  
22 realized there was no way out. We then climbed into the  
23 ceiling and was there for almost two hours. Then we were  
24 found and arrested."

25 That's all of the handwritten part of the

1 statement. And it's signed at 4:06 a.m., signature of  
2 Patrick Murphy.

3 Officer Graham, burglary of a building  
4 was 'a felony offense back in 1984?

5 A. Correct.

6 Q. And still is for that matter?

7 A. Yes, sir.

8 Q. Back in '84 was it a second-degree felony?

9 A. Yes, sir.

10 Q. And Patrick Murphy at that time he told us in  
11 his statement was 22 years of age?

12 A. Correct.

13 Q. And you came to find out that his stepbrother,  
14 Allen Skinner, was 18 years of age; is that right?

15 A. Yes, sir.

16 MR. WIRSKYE: I'll pass the witness, Your  
17 Honor.

18 CROSS-EXAMINATION

19 BY MS. BUSBEE:

20 Q. Officer Graham, just a few questions. When --  
21 do you recall how you got those gentlemen out of the  
22 ceiling? Did you call to them? How did that event occur,  
23 if you remember?

24 A. To the best of my knowledge it was just verbal  
25 commands to come out of this roof.



1 Q. Okay. Now, this statement that has been  
2 introduced into evidence, did the defendant write that or  
3 did you write it out based on what he told you?

4 A. No, ma'am, he wrote it out himself.

5 Q. And was he cooperative with you after you  
6 placed him under arrest?

7 A. Yes, ma'am, to my memory he was.

8 MS. BUSBEE: I'll pass the witness, Your  
9 Honor.

10 MR. WIRSKYE: I have nothing further of  
11 this witness, Your Honor.

12 THE COURT: Thank you, Sheriff. You may  
13 stand down.

14 MR. SHOOK: May he be finally excused,  
15 Your Honor?

16 MS. BUSBEE: We have no objection.

17 THE COURT: He may.

18 MR. SHOOK: May we approach the bench?

19 THE COURT: You may.

20 (Bench conference)

21 THE COURT: Members of the jury, I need  
22 to have a brief hearing. If you would, go with the Sheriff  
23 and I'll have you back in a few minutes.

24 [Jury out]

25 THE COURT: Call your next witness.

1 MR. SHOOK: We call Holly Becka.

2 HOLLY BECKA,

3 having been duly sworn, was examined and testified as  
4 follows:

5 DIRECT EXAMINATION

6 BY MR. SHOOK:

7 Q. Could you tell us your name, please.

8 A. My name is Holly, last name Becka, B-E-C-K-A.

9 Q. How are you employed?

10 A. I'm employed with the Dallas Morning News.

11 Q. And let me turn your attention back to March  
12 of 2001 and April of 2001 and ask what your assignment was  
13 back at that time?

14 A. At that time I was covering Dallas County  
15 criminal courts and the Texas Seven case.

16 Q. Back in that time did you receive some  
17 correspondence from Patrick Murphy?

18 A. Yes, sir.

19 Q. And let me show you State Exhibits 1025, 1026.  
20 Do these appear to be copies of letters that Mr. Murphy sent  
21 you?

22 A. I believe so.

23 Q. Had you written him a letter asking him  
24 questions previous to that?

25 A. Yes, sir.

1 Q. And were these letters in response to your  
2 letter, asking him basic questions about his background?

3 A. Yes.

4 MR. SHOOK: Pass the witness, Judge.

5 CROSS-EXAMINATION

6 BY MS. BUSBEE:

7 Q. Ms. Becka, where are the originals?

8 A. They may be somewhere in my possession. I was  
9 unable to locate them.

10 Q. You didn't turn these over to the State of  
11 Texas?

12 A. No.

13 Q. Did you let them know that you had this  
14 correspondence?

15 A. No.

16 Q. Ms. Becka, are these two exhibits, is this the  
17 entire correspondence that you had with the defendant?

18 A. I believe it is. I remember two letters.

19 Q. Are you -- had you -- are these the only  
20 handwritten items that you received from the defendant?

21 A. I believe so.

22 Q. Were you familiar with his handwriting?

23 A. No.

24 Q. So do you know for a fact that this is his  
25 handwriting? Are you assuming that because you received the

1 originals of these letters?

2 A. Yeah. I was just assuming based on, you know,  
3 his book-in number and his name and then his, you know, the  
4 letter was responsive to questions that I had asked.

5 Q. Do you know for a fact that those are exact  
6 duplicates?

7 A. No.

8 MS. BUSBEE: Pass the witness, Your  
9 Honor.

10 MR. SHOOK: Nothing further, Judge. And  
11 we'll offer those for record purposes in front of the jury.

12 MS. BUSBEE: Your Honor, I object to any  
13 reference to this correspondence in front of the jury. I  
14 don't think a proper predicate has been laid and I would ask  
15 the Court to comply with rule -- Texas rule of evidence  
16 1002.

17 THE COURT: At this time State's Exhibits  
18 Nos. 1025, 1026 will be admitted for record purposes at this  
19 time, but not in front of the jury until they have been  
20 authenticated.

21 MS. BUSBEE: So there's no reason to put  
22 her on the witness stand in front of the jury.

23 MR. SHOOK: The letters speak for  
24 themselves, Judge, as far as authentication goes. The very  
25 text of the letters identifies them. I don't think we have

1 to have the original. They are exact copies.

2 MS. BUSBEE: We don't know that, Your  
3 Honor, because this witness has said that she does not know  
4 if these are exact copies and she's not even sure where the  
5 originals are. Where there are originals, there's no --  
6 there's no exception to admitting those that has been shown  
7 to this Court. Moreover, this witness is not acquainted  
8 with his handwriting. And it's our position that they  
9 haven't been properly authenticated and no predicate has  
10 been laid to authenticate them.

11 THE COURT: Well, not that they cannot be  
12 authenticated. I don't know where the copy came from. If  
13 it came from the jail, you can put the jail people on that  
14 we took it from Murphy before he came out, then it's coming  
15 in.

16 MR. SHOOK: If I could have Ms. Becka,  
17 then, read the entire letters to see if they look like the  
18 letters that she received.

19 MS. BUSBEE: Well, she said she doesn't  
20 know, Your Honor, whether or not those are exact duplicates,  
21 but that she has the originals some place and may have them.  
22 That would be the proper way to authenticate these, not to  
23 have her read something that she received two years ago,  
24 multiple pages of handwritten documents, asking her to say  
25 that's the same one when she said already she can't say for

1 certain.

2 THE COURT: All she's testified to is she  
3 received letters that looked like that. That's halfway  
4 there.

5 THE WITNESS: (Witness reads letters.)

6 REDIRECT EXAMINATION

7 BY MR. SHOOK:

8 Q. Do those appear to be the copies of the two  
9 letters that you received from Mr. Murphy?

10 A. I believe so. I remember reading, you know,  
11 parts of these.

12 Q. Okay. And you said you looked for the  
13 original?

14 A. Yes.

15 Q. And you were unable to find it?

16 A. Yes.

17 Q. Do you know if it has been lost, destroyed, or

18 --

19 A. Well, I believe that I had them at home and  
20 then I packed up a bunch of stuff when we moved, so they may  
21 be in my storage facility, but I don't have them right now  
22 at my house or at work.

23 Q. And you have looked and you have been unable  
24 to find them?

25 A. Yes, sir.

1 MR. SHOOK: Judge, I feel that under 1004  
2 they are admissible. If the originals are lost or destroyed  
3 or not obtainable, they come in. I think the letters  
4 themselves speak for themselves. They were written in  
5 response to Ms. Becka's letters and they contain his name,  
6 along with his identification numbers. And the text of the  
7 letters themselves obviously identify it as Mr. Murphy.

8 So I think any other objections that the  
9 defense would have would go not to admissibility, but to  
10 weight. I guess they could try to argue some mischievous  
11 inmate somehow forged some letters about Mr. Murphy and sent  
12 them to Ms. Becka, but it's obvious that those are from Mr.  
13 Murphy and he identifies himself. And Ms. Becka has  
14 testified that those, indeed, appear to be copies of the  
15 letters that were sent.

16 MS. BUSBEE: Your Honor, our position is  
17 we have these rules of evidence for a reason and the reason  
18 is so that trustworthy evidence can be introduced into court  
19 and it couldn't be more important than in a hearing where a  
20 man faces a death sentence.

21 THE COURT: I've already ruled as soon as  
22 the State can prove where they got the copies from or how  
23 they got them --

24 MS. BUSBEE: May I be heard in response  
25 of what he said about compliance with Rule 1004? We have

1 not heard any testimony that indicates that they are lost or  
2 not available, just that they weren't where she looked, but  
3 there are other places where they may be.

4 And, secondarily, she has -- I renew my  
5 objection under Texas Rule of Evidence No. 901, this witness  
6 has no familiarity and cannot say that this is the  
7 defendant's handwriting, and to make my objection crystal  
8 clear on the record.

9 MR. SHOOK: In response to that, Judge,  
10 as far as the identification of handwriting, the jury has  
11 samples of his handwriting and signature and they can make  
12 that judgment. That law is clear on that.

13 As far as having to put a witness on to  
14 say where the copy comes from, that's not a requirement  
15 under the law. Once Ms. Becka has identified it, yeah,  
16 that's copies of the letters I got, she's identified the  
17 document.

18 THE COURT: Anything more from this  
19 witness?

20 MR. SHOOK: No.

21 MS. BUSBEE: No.

22 THE COURT: Thank you, Ms. Becka. I'll  
23 take these issues under advisement and move on with the jury  
24 and we'll come back to this later.

25 MR. SHOOK: Can Ms. Becka be excused



1 subject to recall?

2 THE COURT: She is subject to recall.

3 [Jury in]

4 THE COURT: Thank you. You may be  
5 seated. Call your next witness.

6 MR. SHOOK: Call Jeannie Grieser.

7 JEANNIE GRIESER,  
8 having been duly sworn, was examined and testified as  
9 follows:

10 DIRECT EXAMINATION

11 BY TOBY SHOOK:

12 Q. Would you tell us your name, please.

13 A. Jeannie Grieser.

14 Q. Could you spell your last name for the Court  
15 Reporter, please.

16 A. G-R-I-E-S-E-R.

17 Q. Are you married and have a family?

18 A. Yes, I am.

19 Q. How many children do you have?

20 A. Two boys.

21 Q. And are you employed?

22 A. Yes, I am.

23 Q. What type of job do you have?

24 A. I'm an executive administrator.

25 Q. Let me turn your attention back and ask you

1 where you were born and raised?

2 A. In Irving, Texas.

3 Q. Did you have brothers and sisters?

4 A. I have one sister.

5 Q. And what high school did you attend?

6 A. Irving High.

7 Q. What year did you graduate?

8 A. 1980.

9 Q. Let me turn your attention back to your high  
10 school years and ask if you met a person by the name of  
11 Patrick Murphy?

12 A. Yes, I did.

13 Q. And how did you meet Mr. Murphy?

14 A. Through ROTC.

15 Q. Did you actually have a class together?

16 A. I can't remember if we were in the same class  
17 or not. We were both on drill team.

18 Q. Do you see Mr. Murphy here in the courtroom  
19 today?

20 A. Yes, I do.

21 Q. Could you point him out, please?

22 A. The last man at the desk there.

23 Q. The man in the blue shirt with the coat on?

24 A. Correct.

25 MR. SHOOK: Your Honor, let the record

1 reflect the witness has identified the defendant.

2 Q. (By Mr. Shook) Approximately how old were you  
3 when you first met Mr. Murphy?

4 A. Fifteen.

5 Q. Was he older than you?

6 A. I believe so.

7 Q. Okay. Near the same age, though?

8 A. Yes, sir.

9 Q. And you were on the same drill team with him?

10 A. I was on the girl's drill team. We had  
11 separate drill teams.

12 Q. That's for ROTC?

13 A. Yes, sir.

14 Q. Did you ever go to any social activities with  
15 him?

16 A. I went to one homecoming dance which his  
17 parents took us and dropped us off. Other than that it was  
18 just as ROTC went out as a group.

19 Q. How did that particular date go with him to  
20 the homecoming dance?

21 A. It went very badly. He insulted me several  
22 times and I found a different way home.

23 Q. Did you still see him at school and after  
24 school after that?

25 A. Through ROTC activities, yes.

1 Q. Did you have the same friends or  
2 acquaintances?

3 A. Yes, sir.

4 Q. So you were still around him after that  
5 particular time?

6 A. Yes, I was.

7 Q. Let me turn your attention to after or near  
8 the time you graduated. Did you see Mr. Murphy again on one  
9 occasion where he invited you to his wedding?

10 A. Uh, yes.

11 Q. Do you remember how old you were at that time?

12 A. I don't recall.

13 Q. Did you actually go to the wedding?

14 A. Yes, with my sister and her husband at that  
15 time.

16 Q. Okay. At that time did you lose track or did  
17 you not talk to Mr. Murphy after that?

18 A. No, I didn't.

19 Q. Okay. Let me turn your attention now to 1984,  
20 early 1984. Did you come into contact with him, with  
21 Patrick Murphy again at that time?

22 A. Yes. He called me at work one day.

23 Q. In early 1984, how old were you at that time?

24 A. I was 22.

25 Q. And were you working?

1 A. Yes, I was, two jobs.

2 Q. Two jobs?

3 A. Two jobs.

4 Q. And where were you working?

5 A. I was working at Sleep Country and at a place  
6 called Fast Tax.

7 Q. What did you do at Sleep Country?

8 A. Customer service.

9 Q. Okay. How about Fast Tax?

10 A. The same thing, customer service.

11 Q. All right. So you were working two jobs at  
12 that time?

13 A. Correct.

14 Q. And how did Patrick Murphy get a hold of you  
15 at that point in time?

16 A. Through mutual acquaintances.

17 Q. Did he call you on the phone?

18 A. Yes, he did.

19 Q. When he called you on the phone the first  
20 time, was that at work?

21 A. Yes, it was.

22 Q. Did you recognize his voice then?

23 A. Not the first time.

24 Q. Did he identify himself?

25 A. Yeah.

1 Q. Okay. What types of things did he talk to you  
2 about then?

3 A. Basically just catching up, what I had been up  
4 to.

5 Q. Okay. Did he inquire whether you had a  
6 boyfriend?

7 A. Yes.

8 Q. And what did you tell him?

9 A. Yes, I did.

10 Q. Did he ask you out on a date at that time?

11 A. Yes, he did.

12 Q. And did you turn him down?

13 A. Yes, I did.

14 Q. The rest of the conversation, just casual  
15 conversation about what you had been doing?

16 A. Yes.

17 Q. Okay. Now, did he continue to call you after  
18 that?

19 A. Three or four times.

20 Q. When he would call you on those other  
21 occasions, did you recognize his voice right away?

22 A. Yes, I did.

23 Q. And what types of things did he talk to you  
24 about on those other occasions?

25 A. It was the same thing, what are you doing?

1 What's going on?

2 Q. Okay. Did you ever have a chance to see him  
3 in person?

4 A. Um, yes, I did.

5 Q. And when did that happen?

6 A. I had -- my boyfriend and I had a date. I was  
7 dropping my son off at my sister's house. And she called  
8 and asked if he would want to come say hello and he did.  
9 And we talked five to ten minutes and I introduced him to my  
10 boyfriend and then we left.

11 Q. Your boyfriend at that time is now your  
12 husband?

13 A. Yes.

14 Q. Okay. So you had a chance not only to talk to  
15 him in person, but also see him physically again?

16 A. Yes.

17 Q. And let me ask you back in March, 1984, where  
18 were you living at that time?

19 A. I was living with my mom in her apartment.

20 Q. Okay. Was that in Irving, Texas?

21 A. Yes, it was.

22 Q. And what were some of the major streets  
23 located around there?

24 A. Walnut Hill Lane and Beltline Road.

25 Q. Who else was living with you and your mother

1 in that apartment?

2 A. My son.

3 Q. And where did your son stay in the apartment?

4 A. He had a bed in an alcove off of the bedroom.

5 It was a one-bedroom apartment with an office alcove area.

6 And we put his bed there. But most of the time, he was two  
7 years old, he wanted to sleep with grandma.

8 Q. And where did you stay at? Where did you  
9 sleep at night?

10 A. Most of the time I slept on the couch.

11 Q. And you were working two jobs at that point in  
12 March?

13 A. Yes.

14 Q. Okay. Let me turn your attention, then, to  
15 March 20th of 1984 and ask if some people came over to visit  
16 you at your apartment that evening?

17 A. Yes, they did. My sister, Donald Kearney,  
18 Carla, who was Donny's girlfriend, and Mr. Murphy came over  
19 to borrow a couple of books for Carla.

20 Q. Were you expecting them to come over that  
21 evening?

22 A. No.

23 Q. About what time did they arrive?

24 A. About 8:00 at night.

25 Q. How were you dressed?



1 A. I was dressed for bed in my nightgown and  
2 robe.

3 Q. Did they all four come into your apartment  
4 then?

5 A. Yes, they did.

6 Q. How long did they stay?

7 A. Ten, fifteen minutes.

8 Q. Did you talk to Mr. Murphy that evening?

9 A. No, I didn't.

10 Q. Is that the first time that he had ever been  
11 in your apartment?

12 A. Yes.

13 Q. After they picked the book up and you had some  
14 conversations with your sister, did they leave at that point  
15 in time?

16 A. Yes, they did.

17 Q. Were you surprised to see Mr. Murphy there  
18 that night of the 20th?

19 A. I was surprised to see all of them. That he  
20 was with them, no, because I knew he was staying with Donny.

21 Q. Okay. And how did you know Donny Kearney?

22 A. I've known him through school.

23 Q. Okay. So you have known him for a number of  
24 years?

25 A. Yes.

1 Q. And did he live in some apartments near yours?

2 A. Yes, he did, right down the road.

3 Q. Who was his roommate at the time?

4 A. Billy Brown.

5 Q. Is he another high school friend?

6 A. Yes.

7 Q. And it was your understanding that Mr. Murphy  
8 was going to be staying with them?

9 A. Yes.

10 Q. Okay. Let me show you some photographs which  
11 have been marked State Exhibit 990 through 1008. And I  
12 believe you have seen these photographs outside the presence  
13 of the jury.

14 A. Yes.

15 Q. Is 990, is that a photograph of the diagram of  
16 the apartment you were staying in?

17 A. Yes, it is.

18 Q. And the rest of the photographs, 991 through  
19 1008, are those photographs of the apartment, the exterior  
20 as well as the interior?

21 A. Yes.

22 MR. SHOOK: Your Honor, at this time we  
23 would offer State Exhibits 990 through 1008.

24 MS. BUSBEE: We've seen those, Your  
25 Honor, and we have no objection.

1 THE COURT: Nos. 990 through 1008 shall  
2 be admitted.

3 Q. (By Mr. Shook) What we're seeing in 990 is a  
4 drawing of how your apartment was laid out at that time; is  
5 that right?

6 A. Correct.

7 Q. And we see -- where would the front door be?

8 A. It would be on the far right, right there by  
9 that square box right where you are pointing.

10 Q. Okay. And that's, then, would open into the  
11 living room area?

12 A. Correct.

13 Q. Now, we see some, I believe a table and some  
14 couches there in the living room area?

15 A. Yes.

16 Q. Is that couch there against the wall the one  
17 that you slept on at night?

18 A. Yes, it is.

19 Q. And is that the area that Patrick Murphy was  
20 in the evening of the 20th when he came over with your  
21 sister?

22 A. Yes. He was in the living room area.

23 Q. All right. Now, the bedroom area is, that  
24 then back behind the living room area, just down the hall?

25 A. Down the hall behind the living room, yes.

1 Q. Is there a patio that's located there in the  
2 apartment?

3 A. Yes.

4 Q. And we see that located right where we're  
5 pointing now?

6 A. Correct.

7 Q. And how many sliding glass doors open onto  
8 that patio?

9 A. Two, one from the bedroom and one from the  
10 living room.

11 Q. So the way you were sleeping, there is  
12 actually a sliding glass door very close to it?

13 A. Correct.

14 Q. Let me show you State Exhibit 991. Does that  
15 show the front door to the apartment?

16 A. Yes, it does.

17 Q. I want to show you some black and white photos  
18 that are aerial views. Do you recognize 1027 through 1029  
19 as being aerial photographs showing where your apartment was  
20 located, as well as the surrounding area?

21 A. Yes, sir.

22 MR. SHOOK: We'll offer State Exhibits  
23 1027 through 1029.

24 MS. BUSBEE: No objection, Your Honor.

25 THE COURT: Nos. 1027 through 1029 shall

1 be admitted.

2 Q. (By Mr. Shook) On State Exhibit 1027 there  
3 are two red dots, one that has the initials DK on it and  
4 then one with JK; is that right?

5 A. Correct.

6 Q. Do those represent where Donny Kearney was  
7 staying, as well as where your apartment was?

8 A. Yes, it does.

9 Q. Now, at that time you were Jeannie Kay; is  
10 that right?

11 A. Correct.

12 Q. Looking on the monitor at 1027, this is the  
13 photograph that actually shows where Donny Kay's apartment  
14 was, which was in the lower part of the photograph where the  
15 red dot is; is that right?

16 A. Correct.

17 Q. And then the red dot at the top of the  
18 photograph, is that approximately where your apartment was  
19 located?

20 A. Yes, it is.

21 Q. And the curvy road we see on the side, which  
22 particular street was that?

23 A. Walnut Hill Lane.

24 Q. Now, let me show you State Exhibit 1028. Does  
25 this show a side view of -- along where the power lines were

1 where your apartments were located?

2 A. Yes, it is.

3 Q. And the 7-Eleven was located near this area;  
4 is that right?

5 A. Correct.

6 Q. Was that near the corner of Beltline and  
7 Walnut Hill?

8 A. Yes, it was.

9 Q. Near your apartment?

10 A. Yes.

11 Q. How much of a walk would it have been from  
12 your apartment down to Donny Kearney's apartment?

13 A. Maybe ten, fifteen minutes.

14 Q. Okay. Let me turn your attention to the day  
15 after Patrick Murphy had showed up at your apartment with  
16 Donny Kearney, the 21st of March. Do you recall the time  
17 that you got home that evening?

18 A. It was between 9:00 and 9:30 p.m.

19 Q. Is that when you had gotten off work from your  
20 job at Sleep Country?

21 A. Yes, it is.

22 Q. When you got home, what did you do once you  
23 arrived?

24 A. I gave my son a bath and put him to bed. And  
25 my boyfriend came over for about an hour. He left at 11:00.

1 Q. Okay. About 11:00 p.m.?

2 A. Yes. And then I went to bed at 11:30.

3 Q. Okay. When you went to bed, how were you  
4 dressed?

5 A. In my nightgown.

6 Q. Okay. Is that a red nightgown that you were  
7 wearing?

8 A. Yes, it is.

9 Q. Was your mother home at that time?

10 A. No. She didn't get home until about 12:15  
11 a.m., between 12:15 and 12:30. She worked nights.

12 Q. What time were you going to wake up in the  
13 morning?

14 A. Um, by 5:00.

15 Q. Okay. Did you have an alarm set out there in  
16 the living room area?

17 A. Yes, I did.

18 Q. Where did you have that set up?

19 A. On an end table.

20 Q. Now, when you went to bed, did you keep any  
21 particular lights on?

22 A. The laundry room light stayed on and porch  
23 light, patio light.

24 Q. So where the patio was in the diagram, there  
25 was a light out there?

1 A. Correct.

2 Q. And that was on when you went to bed?

3 A. Yes.

4 Q. Now, did you awaken when your mother came home  
5 that evening?

6 A. No.

7 Q. Was that unusual for you not to wake up?

8 A. No.

9 Q. I want to turn your attention to around 4:40  
10 in the morning then, be on the morning of March 22nd of  
11 1984. Did you awaken approximately at that time?

12 A. Yes, I did.

13 Q. Do you know what woke you up at that time?

14 A. No, I don't.

15 Q. When you woke up, what did you see?

16 A. The silhouette of a man standing by the table  
17 in front of the window.

18 Q. Was that the table there in the living room  
19 where you were laying?

20 A. Yes.

21 Q. Let me show you State Exhibit 992. Does that  
22 show the front door of your apartment?

23 A. Yes, it does.

24 Q. And then there's -- looks like -- is that a  
25 collection of -- are those salt shakers?



1 A. Salt and pepper shakers.

2 Q. Was he standing near that area?

3 A. Yes. The table was right to the left of that,  
4 along with the front window and that's where he was  
5 standing.

6 Q. Okay. And that's what we see in 993. He was  
7 standing by that table. Could you see his silhouette?

8 A. Yes, I could.

9 Q. And what could you tell about him at that  
10 time?

11 A. Um, he had dark hair, very full on top. He  
12 was wearing some type of checkered shirt. I couldn't make  
13 out the colors, but I could make out the light and dark  
14 checks and baggy jeans.

15 Q. Did he have anything over his face?

16 A. Yeah. He had a towel wrapped around his face  
17 from the eyes down.

18 Q. Okay. Now, was he moving at all at that time?

19 A. At that moment, no.

20 Q. All right. Did you cry out, make any noise at  
21 all?

22 A. No, I pretended to be asleep.

23 Q. Why did you do that?

24 A. Because officers had come to my high school  
25 and said if you wake up with someone in your house, pretend

1 to be asleep and maybe they would take what they want and  
2 leave.

3 Q. Were you frightened for your life at that  
4 time?

5 A. Yes.

6 Q. How about the life of your son?

7 A. Absolutely.

8 Q. And your mother?

9 A. Absolutely.

10 Q. After you saw him standing there, what did he  
11 do next?

12 A. He walked around the apartment towards the  
13 salt and pepper shakers and in front of the television set  
14 to where I had my alarm clock and a lamp plugged in and he  
15 unplugged those.

16 Q. Let me show you State Exhibit 994. Is this  
17 the couch you were laying on at that time?

18 A. Yes, it is.

19 Q. And was your head located near the corner  
20 there?

21 A. Yes, it was.

22 Q. Let me show you State Exhibit 996. Is this  
23 the table that you kept your alarm clock on?

24 A. Yes, it is.

25 Q. And once you saw him walk across the room and

1 go towards that table, what did he do then?

2 A. He unplugged the alarm clock and the lamp and  
3 then came over to the couch and stood over me and stared at  
4 me.

5 Q. How long did he stand over and stare at you?

6 A. Um, I'm not sure, maybe less than a minute.

7 Q. Okay. Were you remaining perfectly still at  
8 that time?

9 A. Yes.

10 Q. What's the next thing you saw him do?

11 A. He knelt down and I saw him reach out or felt  
12 him reach out and I opened my eyes very quickly.

13 Q. What did you see when you opened your eyes?

14 A. A knife.

15 Q. What type of knife was it?

16 A. It looked to me like a paring knife, only  
17 larger, maybe three inches. And I just caught a glimpse of  
18 that as he put his hand over my eyes.

19 Q. What did he do with the knife after he put his  
20 hand over your eyes?

21 A. He put the knife against my throat.

22 Q. Did you feel the knife against your throat?

23 A. Yes, I did.

24 Q. Once he put the knife against your throat,  
25 what did he say to you?

1 A. He told me to keep my eyes shut and cooperate  
2 or something might happen.

3 Q. When you heard him say and make that threat,  
4 did you recognize the voice?

5 A. Yes.

6 Q. Whose voice was it?

7 A. It was Pat Murphy's.

8 Q. No doubt about that in your mind?

9 A. No.

10 Q. After he made that threat to you, what's the  
11 next thing that he did?

12 A. He turned me over and tied my hands behind my  
13 back.

14 Q. Could you tell what he tied your hands with?

15 A. A towel.

16 Q. Is that the towel that he had over his face or  
17 did you know at that time?

18 A. Um, I didn't know at that time.

19 Q. Okay. So he turned you over and then tied  
20 your hands behind your back?

21 A. Yes.

22 Q. What did he do next?

23 A. Um, pulled the pillowcase out from under my  
24 head, shook the case off because he still had the knife to  
25 my throat, so I assume he shook the pillowcase off and put

1 that over my head.

2 Q. So after he had taken the pillowcase off the  
3 pillow, he then placed the pillowcase over your head?

4 A. Yes, he did.

5 Q. Let me show you State Exhibit 995. Is this  
6 the pillowcase we see laying on the couch?

7 A. Yes, it is.

8 Q. And this was the pillow that you had been  
9 laying on?

10 A. Yes.

11 Q. After your hands were tied behind your back  
12 and the pillowcase was placed over your head, what did he do  
13 then?

14 A. He sat on my stomach.

15 Q. Okay. Did he straddle your stomach?

16 A. Yes, he did.

17 Q. Once he straddled your stomach, what did he do  
18 with the knife?

19 A. He took the knife and ran it along my neck and  
20 down my chest and stopped just below the breast.

21 Q. Did he say anything while he was running this  
22 knife down your body?

23 A. He told me once again to be quiet and  
24 cooperate and no one would be hurt.

25 Q. Okay. Then what's the next thing that he did?

1 A. He cut the straps to my nightgown and pulled  
2 it off.

3 Q. After he pulled your nightgown off, what did  
4 he do then?

5 A. He did the same thing he did before with the  
6 knife, ran it down my throat and chest.

7 Q. He started at your throat?

8 A. Uh-huh.

9 Q. And went down your chest?

10 A. Yes.

11 Q. Stopped just below your breasts?

12 A. Yes, he did.

13 Q. After he did that, what did he do?

14 A. Put his hands on me.

15 Q. Okay. Where did he put his hands?

16 A. On my vagina.

17 Q. Then what did he do?

18 A. Then he rolled me onto the floor between the  
19 couch and coffee table.

20 Q. Were your hands tied behind your back at that  
21 time?

22 A. Yes, they were.

23 Q. Pillowcase still over your head?

24 A. Yes.

25 Q. When he rolled you to the floor, what

1 happened?

2 A. I kind of lost my balance and reached out kind  
3 of like that (demonstrating) and touched his knee and he  
4 told me not to touch him again.

5 Q. Then what happened?

6 A. He said I could stay down there where I could  
7 get to it better and lifted the pillowcase up to the edge of  
8 my nose and forced oral sex.

9 Q. Okay. As he was forcing you to have oral sex  
10 with him, could you feel the knife near your body?

11 A. Yes. He was running it across my back.

12 Q. The top part of your back?

13 A. Yes.

14 Q. Just running it back and forth?

15 A. Uh-huh.

16 Q. After -- after he had forced you to have oral  
17 sex with him, what did he do with you then?

18 A. He put me back up on the couch and proceeded  
19 to have intercourse.

20 Q. Did he lay you on your back?

21 A. Yes.

22 Q. Did you still have the pillowcase over your  
23 face?

24 A. Yes.

25 Q. And by that time he sexually assaulted you?

1 A. Yes, he did.

2 Q. While he was sexually assaulting you, did he  
3 have the knife still against your body?

4 A. Yes.

5 Q. Where did he have it?

6 A. I believe it was somewhere up in here  
7 (demonstrating).

8 Q. Do you have any idea how long he assaulted  
9 you?

10 A. No, I don't. Seemed like forever to me.

11 Q. Did he say anything while this act was going  
12 on?

13 A. No, not that I recall.

14 Q. At some point in time did he ejaculate?

15 A. Yes.

16 Q. After he had done that, what did he do then?

17 A. He got up and told me -- rolled me over and  
18 told me he was going to untie my hands and tie them tighter.

19 Q. Okay.

20 A. And at that point I heard him rip something.  
21 I was assuming it was the towel and tied my hands tighter  
22 and then gagged me with the other half.

23 Q. And he put a gag in your mouth?

24 A. Uh-huh.

25 Q. Had he gagged you earlier when he first had



1 approached you?

2 A. When he first approached me, yes.

3 Q. During this whole assault were you concerned  
4 about whether your son and mother would be harmed?

5 A. Yes.

6 Q. At some point in time did you hear your mother  
7 make a noise?

8 A. Yes, I did. She coughed in her sleep, so I  
9 knew at that point in time they were all right.

10 Q. You just wanted to not resist and hope that  
11 everyone would make it out alive?

12 A. Correct.

13 Q. After he tied your hands tighter and put a gag  
14 in your mouth, what's the next thing that he did?

15 A. He said he would cover me up with a blanket so  
16 I wouldn't catch cold in case no one found me.

17 Q. Then what did he do?

18 A. He walked -- he told me that once he left, I  
19 could scream and make as much noise as I wanted, that he  
20 would leave the patio door open, so that if my mother didn't  
21 wake up, someone else would hear.

22 Q. So he said if your mother didn't wake up,  
23 someone else would hear?

24 A. Yes.

25 Q. Now, had you mentioned your mother at all to

1 him during this assault?

2 A. I didn't say a word.

3 Q. He's the one that brought up the fact that he  
4 knew your mother was there?

5 A. Yes.

6 Q. Did you hear him moving around the apartment  
7 at that time?

8 A. He walked all around the apartment. I heard  
9 him open the sliding glass door and walk out onto the patio.

10 Q. Could you hear what he was doing out on the  
11 patio?

12 A. No, I couldn't tell. I still had the  
13 pillowcase over my head and he the entire time was saying,  
14 "I'm still here. I'm still here."

15 Q. Then what happened?

16 A. He came back and approached me and took the  
17 pillow -- made me face my head to the corner of the couch,  
18 took the pillowcase off and laid it across the back of my  
19 head. And I believe at that point in time he left out the  
20 front door.

21 Q. Okay. After you heard him leave out the front  
22 door, what did you do?

23 A. I got up and went into my mother's room, woke  
24 her up, and had her untie me and called the police.

25 Q. Did the police come quickly after that?

1 A. Absolutely.

2 Q. The towel that was used to tie up your hands,  
3 were you able to identify that towel?

4 A. It was the towel I had dried my hair with that  
5 night.

6 Q. And where had you left it?

7 A. In the bathroom.

8 Q. After the police arrived, did you tell the  
9 officers there what had happened to you?

10 A. Yes, I did.

11 Q. Where did they take you?

12 A. They took me to the Irving Police Department.

13 Q. Did you talk to a Detective Dix at that time?

14 A. Yes, I did.

15 Q. And did Detective Dix ask you if you  
16 recognized this man's voice?

17 A. Yes, he did.

18 Q. And what did you tell him?

19 A. I said that I did, that I was fairly certain  
20 it was Patrick Murphy, that I would like to hear the voice  
21 one more time.

22 Q. After you spoke with Detective Dix, did --  
23 were you then taken to Parkland Hospital?

24 A. Yes, I was.

25 Q. At that time did you undergo a rape exam?

1 A. Yes, I did.

2 Q. A couple of days later on March 26th, did the  
3 police arrange for you to come down to the Sheriff's Office  
4 for a voice identification lineup?

5 A. Yes.

6 Q. And what type instructions were given to you  
7 before that lineup?

8 A. They told me to sit and listen to all six  
9 voices and not to say anything until I had heard all of  
10 them.

11 Q. Okay. What -- did you actually see the person  
12 that was making statements?

13 A. No. There was a wooden screen between us  
14 where I couldn't see any of their faces.

15 Q. What statement were they to make to you?

16 A. Um, the first two that he had said to me that  
17 night. "Be quiet and cooperate or something might happen."  
18 And "to cooperate and no one would get hurt."

19 Q. And were you able to make an identification  
20 from that voice lineup?

21 A. Immediately.

22 Q. And do you recall the number of the person  
23 that you picked out that night?

24 A. It was No. 4.

25 Q. And any doubt in your mind once you heard the

1 voice that that was Patrick Murphy?

2 A. No.

3 Q. You had a chance to observe the height and  
4 build of the person in your apartment that evening. Was it  
5 the same height and build of Patrick Murphy?

6 A. Yes, it was.

7 Q. You also had a chance to observe him walk  
8 around your apartment, move around your apartment. Did he  
9 move and walk the same way Patrick Murphy did?

10 A. Yes, he did.

11 Q. Let me show you State Exhibit 998. Is this  
12 the hallway that leads from the living room down to where  
13 your mother was at that evening?

14 A. Yes, it is.

15 Q. Is that your red robe that was draped on the  
16 side of the couch?

17 A. Yes.

18 Q. State Exhibit 999, does that show the glass  
19 that was given to you?

20 A. Yes. He had put a glass in my hands and told  
21 me I could throw it to wake someone up.

22 Q. State Exhibit 1000, does this kind of show a  
23 view from the hallway into the living room area?

24 A. Yes, it does.

25 Q. In fact, is that your mother with your son who

1 was three at the time; is that right?

2 A. He was two at the time.

3 Q. Two at the time. State Exhibit 1001, is this  
4 your mother's bedroom?

5 A. Yes, it is.

6 Q. That's where your son stayed?

7 A. Yes.

8 Q. And 1002, does that show the patio door that  
9 -- as it was located from her bedroom?

10 A. Yes, it does.

11 Q. No. 1003 shows the curtain after it's been  
12 drawn back?

13 A. Yes.

14 Q. Now, let me show you State Exhibit 1004. Is  
15 this a photograph of the patio itself?

16 A. Yes, it is.

17 Q. We may be able to see it better here in  
18 another photograph, 1005. Does that show the light that was  
19 on at the time you went to bed that night?

20 A. Yes, it does.

21 Q. Had that light been altered in any way?

22 A. Yes, there was a globe on it.

23 Q. And was that missing?

24 A. Yes.

25 Q. And was the light on or off when the police

1 arrived?

2 A. Off.

3 Q. Okay. So at the time during this attack the  
4 light was off?

5 A. Correct.

6 Q. How about the laundry room light inside the  
7 apartment, was that on or off?

8 A. I believe that was off at the time of the  
9 attack. It was on when I went to bed.

10 Q. Let me show you State Exhibit 1007. Is that  
11 the patio from the outside showing the fence and the air  
12 conditioning units next to it?

13 A. Yes, it is.

14 Q. And do you know if this wooden post was --  
15 that's leaned up against it, was there that night?

16 A. I don't know.

17 Q. It's not anything that you or your mother had  
18 ever placed there?

19 A. No.

20 Q. And then 1008, does that show a knife that the  
21 police photographed that evening?

22 A. Yes.

23 Q. Is that a knife that you showed them?

24 A. Yes, it is.

25 Q. And why did you show them that knife?

1 A. Because it was similar to the knife I saw.

2 Q. The type of blade and that sort of thing?

3 A. Yes.

4 Q. Okay. Did you have some other items taken  
5 from your apartment?

6 A. My cigarettes and lighter were missing.

7 Q. What types of cigarettes were those?

8 A. Marlboro Light 100s.

9 Q. You have testified to these events back in  
10 1984, November of 1984, did you not?

11 A. Yes, I did.

12 Q. In front of a jury?

13 A. Yes, I did.

14 Q. Were you present when that jury convicted  
15 Patrick Murphy?

16 A. Yes.

17 Q. Were you also present when Judge MacDowel  
18 sentenced him to 50 years in the penitentiary?

19 A. Yes, I was.

20 Q. Since that time you have become married and  
21 you have another child?

22 A. Yes.

23 Q. Would you just tell the jury how this crime  
24 affected you?

25 MS. BUSBEE: Your Honor, may we approach?



1 THE COURT: You may.

2 (Bench conference)

3 THE COURT: Members of the jury, I need  
4 to have a brief hearing. If you will, go with the Sheriff.

5 [Jury out]

6 THE COURT: Please be seated. Let the  
7 record reflect the jury has been retired, pursuant to the  
8 previously filed motion for a hearing outside the presence  
9 of the jury before any victim impact statements being made  
10 or tendered by the State. Mr. Shook?

11 Q. (By Mr. Shook) Could you tell the Court how  
12 the crime has affected you?

13 A. I had to move. I couldn't stay in the  
14 apartment. I moved within a week afterwards. I was only  
15 getting a half hour's sleep at night. I ended up having to  
16 quit my second job because I was just too tired to work two  
17 jobs. I've had nightmares almost every night for the first  
18 five years, which also encompassed crying in my sleep,  
19 waking up screaming. Took about ten years for them to go  
20 away completely. And to this day I will not live in a house  
21 without a dog because I didn't wake up that night.

22 Q. Do you take other security measures in the  
23 house that you live in?

24 A. I take a lot of security measures. When they  
25 broke out we had flood lights put on every corner of the

1 house. We have extra locks on all the windows. We have  
2 striker plates on our doors and we have the puzzle disk  
3 locks also on the doors.

4 Q. When Mr. Murphy and the others broke out, did  
5 that affect you, also?

6 A. Yes.

7 Q. How did that affect you?

8 A. I was scared to death the entire time they  
9 were out. I informed my workplace and they would not let me  
10 come back to work for three weeks, afraid that they would  
11 show up there.

12 Q. You said that you had nightmares for some five  
13 years and they finally dissipated after ten years. What  
14 types of nightmares were they?

15 A. Nightmares that he would get out and come  
16 after me or my kids.

17 Q. Have you also -- are you taking medication for  
18 panic attacks?

19 A. Yes.

20 Q. And when did those begin?

21 A. Um, the day Mr. Bosillo told me that we had a  
22 trial date set.

23 MR. SHOOK: That's all the questions that  
24 I have in regard to those areas, Judge.

25 MS. BUSBEE: Your Honor, objecting to any

1 victim impact testimony as to a crime for which the  
2 defendant is indicted for or tried, being tried for in this  
3 case. It's not relevant to any of the Special Issues and  
4 it's highly prejudicial.

5 MR. SHOOK: Judge, I think this would be  
6 relevant, since it's an emotional injury, as well as a  
7 physical injury. These are emotional injuries that she  
8 received from this particular offense that are continuing,  
9 injuries that were received because of the defendant's  
10 actions. And I believe those as far as the nightmares and  
11 the emotional effect they had would be relevant in this  
12 particular case, as well as when the defendant escaped  
13 prison. Obviously, the victim is a victim again and her  
14 fears are real. And it's another wrong that's been done to  
15 her. And I think that's relevant, also. These are his  
16 actions, too, breaking out and causing her fears, legitimate  
17 fears at that time.

18 MS. BUSBEE: And that's precisely why,  
19 although I don't at all conceive that this is relevant or  
20 admissible, but that goes to how prejudicial it is, since  
21 the defendant actually took no actions while he was escaped.

22 THE COURT: Give me a few minutes.

23 MR. SHOOK: Can I have the witness go  
24 back to the witness room?

25 THE COURT: Yes.

1 [Off the record]

2 THE COURT: The Court, after reviewing  
3 the proper testimony, will make the following rulings that  
4 the 'emotional distress that was caused to the victim  
5 immediately after the break occurred is admissible. She can  
6 testify she's had nightmares, moved from her apartment, and  
7 took various security measures after the initial sexual  
8 assault occurred.

9 The issue with the subsequent escape and  
10 what the employer did is not admissible.

11 MS. BUSBEE: So, Your Honor, just while  
12 we're on the record here, it's your ruling that it's  
13 relevant and you have done the 404 -- your balancing test,  
14 and you found it is not unduly prejudicial?

15 THE COURT: That's correct. I made the  
16 same analysis as to what was going through her mind at the  
17 time of the prison break, because it didn't happen, it's  
18 speculative, and that's not admissible.

19 MS. BUSBEE: Your Honor, if I may also,  
20 just in an abundance of caution, advise the Court that when  
21 we said victim impact testimony, we meant any testimony so  
22 we might have a hearing outside the presence of the jury if  
23 that's raised again. I don't know that it will be.

24 MR. SHOOK: Patrick Moczygemba, that you  
25 heard from the prison, still suffers, I know, as well as

1 Mr. Burgess from injuries to this day. I know Burgess has  
2 had some operations and Moczygemba is under a doctor's care  
3 because of the dizziness from the head injury. So we plan  
4 on eliciting that.

5 THE COURT: That's admissible.

6 MS. BUSBEE: Injuries, yes, but as to --  
7 of course, we would have another objection to any kind of --  
8 I don't think that's victim impact. I think that's -- but  
9 if there is any other that may be characterized as victim  
10 impact, other than what he just stated.

11 THE COURT: Pull up, have a hearing and  
12 make the Court aware and give me an opportunity to give a  
13 ruling. And please advise her as to what she can testify  
14 to.

15 MR. SHOOK: We will advise her.

16 THE COURT: We need a jury.

17 [Jury in]

18 THE COURT: Please be seated. Mr. Shook?

19 MR. SHOOK: Judge, we will pass the  
20 witness.

21 MS. BUSBEE: No questions, Your Honor.

22 THE COURT: Thank you, ma'am. You may  
23 stand down.

24 MR. SHOOK: May this witness be excused?

25 MS. BUSBEE: No objection, Your Honor.

1 THE COURT: She may.

2 MR. SHOOK: Call Donald Kearney.

3 DONALD KEARNEY,

4 having been duly sworn, was examined and testified as

5 follows:

6 DIRECT EXAMINATION

7 BY MR. SHOOK:

8 Q. Could you tell us your name, please.

9 A. Donny Kearney.

10 Q. Could you spell your last name for the Court

11 Reporter?

12 A. K-E-A-R-N-E-Y.

13 Q. And how are you employed, sir?

14 A. I'm employed with Simmons.

15 Q. Do you have a family?

16 A. Yes, I do.

17 Q. What does your family consist of?

18 A. I'm sorry?

19 Q. What does your family consist of?

20 A. Um, I have one son and two daughters.

21 Q. Okay. Let me ask you where you were born and  
22 raised.

23 A. I was born in Pennsylvania and I was raised  
24 here in Texas.

25 Q. And what high school did you go to?

1 A. Irving High School.

2 Q. What year did you graduate?

3 A. '79.

4 Q. Did you know in your high school days a man by  
5 the name of Patrick Murphy?

6 A. I did.

7 Q. Do you see Mr. Murphy here in the courtroom  
8 today?

9 A. Yes, sir, right there (Witness pointing).

10 Q. You are pointing to the man at the end of the  
11 table with the glasses?

12 A. Yes, sir.

13 Q. And approximately when was it that you first  
14 met Mr. Murphy in high school?

15 A. I met him my freshman year.

16 Q. Did you have any classes together with him?

17 A. No, I didn't.

18 Q. What was your relationship with him at that  
19 time?

20 A. Friend of a friend.

21 Q. Okay. Saw him at school?

22 A. Yeah.

23 Q. Talked to him, that sort of thing?

24 A. Right.

25 Q. Let me turn your attention to March of 1984

1 and ask if you came in contact with him at that time?

2 A. Yes, I did.

3 Q. And do you recall how you came into contact  
4 with him?

5 A. He wanted to know if he could stay a couple of  
6 days with us. He had -- I think if I remember right, he was  
7 kicked out of his aunt's house and wanted a place to stay  
8 for a couple of days, so we gave him a place to stay.

9 Q. Where were you living at that time?

10 A. I was living in Irving off of Walnut Hill.

11 Q. Were you living in apartments there?

12 A. Yes, sir.

13 Q. Where were you working at that time?

14 A. I was working at Tool Tronics.

15 Q. Who -- did you have a roommate?

16 A. Yes, I did.

17 Q. And who was that?

18 A. Bill Brown.

19 Q. Was he another high school friend of yours?

20 A. Yes, sir.

21 Q. Did you and Mr. Brown agree that Patrick  
22 Murphy could come stay with you for a couple of days?

23 A. Yes.

24 Q. Was Mr. Murphy working at that time?

25 A. I don't know if he was or not. I don't



1 recall.

2 Q. Did he have a car?

3 A. No, he did not.

4 Q. Okay. I want to turn your attention to March  
5 20th and that evening and ask if you and Mr. Murphy and some  
6 other people went over to Jeannie Kay's house?

7 A. We did.

8 Q. And who else did you go over there with?

9 A. It was myself, Becky Savage, and Mr. Murphy  
10 and I want to say Carla Jones -- I mean, Carla Kearney.

11 Q. Let me show you State Exhibit 1027. Does this  
12 show an aerial view of where you lived and Jeannie Kay  
13 lived?

14 A. Yes, it does.

15 Q. Down here in the lower part of the photograph,  
16 is that where your apartment was located?

17 A. Yes, sir.

18 Q. And then up here where we see a red dot, is  
19 that the approximate location of where Jeannie Kay lived  
20 with her mother?

21 A. Yes, sir.

22 Q. About what's the distance between those two  
23 points?

24 A. Probably if you were to walk it, probably  
25 about fifteen minutes.

1 Q. Okay. And then this area here to the side,  
2 what -- describe that area.

3 A. That area, it's a path. It's probably a dirt  
4 path. That's grass on the side. It looks like it was used  
5 for like riding motorcycles or, you know, foot traffic or  
6 something like that.

7 Q. Okay. Now, on March 20th when you went over  
8 there with these folks, what was your purpose in going over  
9 there?

10 A. If I'm not mistaken, we went over there to  
11 borrow some books that Carla needed for, I think for a  
12 report that she was doing at school.

13 Q. Okay. And Patrick Murphy went along with you?

14 A. Right.

15 Q. How long did y'all stay in the apartment?

16 A. I want to say it was about fifteen minutes.

17 Q. Okay. Did you see Mr. Murphy move around the  
18 apartment while you were there?

19 A. I think I remember that he was with Jeannie's  
20 son, Stephen, and he was showing him around the apartment.

21 Q. Do you remember Steven being a little over two  
22 years old?

23 A. Yes.

24 Q. And he actually showed Mr. Murphy around the  
25 apartment?

1 A. He did.

2 Q. Did he show him his room?

3 A. That I don't recall. He may have.

4 Q. But you do remember him taking him around the  
5 apartment?

6 A. Yes, I do.

7 Q. After that you left. Did you go back to your  
8 apartment?

9 A. Yes.

10 Q. Where did Mr. Murphy stay? Where did he  
11 sleep?

12 A. He slept on -- I think he slept on our couch,  
13 if I'm not mistaken, because both bedrooms were occupied.

14 Q. While -- let me turn your attention to the  
15 next day and ask if you -- about what time you would have  
16 gotten off work?

17 A. I had gotten off work, I usually got off  
18 around somewhere between 4:00 and 5:00, maybe 5:30 by the  
19 time I got home.

20 Q. When you got home, was Patrick Murphy there at  
21 the apartment?

22 A. Yes, he was.

23 Q. Could you describe the apartment you lived in?

24 A. It was a two-bedroom apartment. Both the  
25 bedrooms were on opposite ends.

1 Q. Let me show you State Exhibit 1009. Is that a  
2 diagram of the layout of the apartment?

3 A. Yes, it is.

4 MR. SHOOK: We'll offer State Exhibit  
5 1009.

6 MS. BUSBEE: No objection, Your Honor.

7 THE COURT: State 1009 shall be admitted.

8 Q. (By Mr. Shook) Looking at the diagram, is  
9 this the front door to the apartment?

10 A. That's correct.

11 Q. And what would this room be?

12 A. That would be a living area.

13 Q. Just to the left of the front door was this  
14 the bedroom you stayed in?

15 A. Yes.

16 Q. And then this bedroom here?

17 A. That would have been Bill's bedroom.

18 Q. Talking about a pretty small apartment?

19 A. Pretty small.

20 Q. Okay. So on the 21st you get home and Patrick  
21 Murphy is there. Did you go somewhere with him that  
22 evening?

23 A. I think we went and played video games down at  
24 the store.

25 Q. And what store would you have gone to?

1 A. We went to 7-Eleven on Walnut Hill and  
2 Beltline.

3 Q. Is that the store located near the apartments  
4 where Jeannie Kay was staying?

5 A. Fairly close.

6 Q. Do you recall about what time that you  
7 returned home that night?

8 A. I want to say it was probably between 10:00  
9 and 11:00.

10 Q. Now, do you remember how Mr. Murphy was  
11 dressed that night?

12 A. If I remember right, it was a plaid shirt and  
13 jeans and a pair of sneakers.

14 Q. And after you got back to the apartment, what  
15 did y'all do then?

16 A. I think we just sat around and drank some  
17 beer, sat around and talked and watched TV.

18 Q. Do you remember him while you were drinking  
19 beer make a comment about Jeannie?

20 A. I think a comment may have come up.

21 Q. What type of comment was it?

22 A. He wouldn't mind getting a hold of her.

23 Q. He wouldn't mind getting a hold of her?

24 A. Right.

25 Q. Now, when he said it at that time, that didn't

1 alarm you then, did it?

2 A. It didn't alarm me, no.

3 Q. About what time would you have gone to bed  
4 that evening?

5 A. I want to say it was around 11:30.

6 Q. What time did you have to get up and go to  
7 work?

8 A. I had to be at work by 7:00 in the morning.

9 Q. Did you have a knife back -- did you carry a  
10 knife as part of your routine?

11 A. I did.

12 Q. What type of knife was that?

13 A. I want to say it was like a lock blade.

14 Q. One of these fold out lock blade knives?

15 A. Yes.

16 Q. Where did you keep it that night?

17 A. Both Bill and I kept them on the counter.

18 Q. Bill Brown also had one?

19 A. Right.

20 Q. When you say the counter, you talking about  
21 the counter that was here in the --

22 A. Yeah, right around that area. There would  
23 have been like a bar type right there.

24 Q. Okay. So when you went to bed that evening,  
25 that's where the knife was located?

1 A. Right.

2 Q. Was Mr. Murphy still awake when you went to  
3 bed?

4 A. Yes, he was.

5 Q. Had your roommate, Mr. Brown, come home yet?

6 A. I think he came home shortly after that.

7 Q. And your bedroom is the one located here next  
8 to the front door?

9 A. Yes.

10 Q. Let me ask you if anything caused you to  
11 become awake in the early morning hours?

12 A. What caused me to wake was that my door is --  
13 my bedroom, there's a glass window right there in my  
14 bedroom. And with the door the way it was positioned, if  
15 the door was opened or closed, you could feel it vibrate or  
16 you could feel the wall vibrate.

17 Q. Okay. Did that front door, then, open at some  
18 point in time in the morning and wake you up?

19 A. It did.

20 Q. Approximately what time was that?

21 A. Around 3:00, 3:30, something like that.

22 Q. Then again later on in the morning, were you  
23 awakened again with the door opening and closing?

24 A. Around 5:00.

25 Q. Around 5:00 in the morning?

1 A. Yeah.

2 Q. Okay. When you awakened in the morning, was  
3 Mr. Murphy awake?

4 A. He was.

5 Q. And what was he doing?

6 A. He was up, I think watching TV, if I'm not  
7 mistaken.

8 Q. Okay. Was he still dressed in the plaid  
9 shirt?

10 A. Yes.

11 Q. Did he indicate to you that he had been awake  
12 all night?

13 A. He looked awful tired, so I just assumed that  
14 he was awake all night or might have been up the majority of  
15 the night.

16 Q. Did it appear -- in the refrigerator or on the  
17 counter, was there a drink that caught your attention?

18 A. There was a Dr. Pepper bottle.

19 Q. Where was that located?

20 A. It was located on the bar.

21 Q. What type of Dr. Pepper bottle was that?

22 A. It was a plastic nonreturnable.

23 Q. Nonreturnable bottle?

24 A. Right.

25 Q. In your apartment complex at that time, did



1 they sell those types of bottles --

2 A. No, they did not.

3 Q. Did they sell those in the machines?

4 A. No, they did not.

5 Q. Where could you purchase those bottles in that  
6 particular area?

7 A. It would have to be one of the gas stations or  
8 7-Eleven or Gulfs.

9 Q. The 7-Eleven that was near Jeannie Kay's  
10 house, did they sell those types of bottles?

11 A. Yes, they did.

12 Q. When he left the 7-Eleven with you, did he  
13 have that Dr. Pepper with him?

14 A. Not that I recall.

15 Q. And the other stores that were located near  
16 there, were they closed during the later evening hours?

17 A. Yes.

18 Q. What time did they close?

19 A. Most of them closed before midnight.

20 MR. SHOOK: That's all the questions we  
21 have at this time, Judge.

22 MS. BUSBEE: I have no questions, Your  
23 Honor.

24 THE COURT: Thank you, Mr. Kearney. You  
25 may stand down.

1 MR. SHOOK: May this witness be excused?

2 MS. BUSBEE: No objection, Your Honor.

3 THE COURT: He may.

4 MR. SHOOK: Call Bill Brown.

5 BILL BROWN,

6 having been duly sworn, was examined and testified as  
7 follows:

8 DIRECT EXAMINATION

9 BY MR. SHOOK:

10 Q. Would you tell us your name, please.

11 A. My name is William Brown.

12 Q. And how are you employed, sir?

13 A. I am employed by the County.

14 Q. What do you do with the County?

15 A. I work for Facilities Management. I'm an  
16 electrician.

17 Q. Okay. And let me ask you where you went to  
18 high school?

19 A. I went to high school at Irving High.

20 Q. Were you born and raised in Irving?

21 A. Yes, sir. I was born in Dallas and raised in  
22 Irving.

23 Q. And what year did you graduate from Irving  
24 High?

25 A. 1979.

1 Q. Did you know a man by the name of Patrick  
2 Murphy in high school?

3 A. Yes, sir, I did.

4 Q. Do you see Mr. Murphy today?

5 A. Yes, I do. He's the first person right over  
6 here.

7 MR. SHOOK: Your Honor, if the record  
8 could reflect the witness has identified the defendant.

9 Q. (By Mr. Shook) About how old were you when  
10 you met Mr. Murphy?

11 A. I was probably about 15, 16 years old. I met  
12 him in high school.

13 Q. Did you have classes with him?

14 A. We were in Jr. ROTC together at one time.

15 Q. Were you friends with him?

16 A. Yes, I was.

17 Q. Did he actually graduate with you?

18 A. No, sir, he did not.

19 Q. What was Mr. Murphy's -- what was his  
20 personality like when you knew him in high school?

21 A. He had aggressive behavior. He was easily  
22 provoked. Got in fights frequently.

23 Q. Did he have a temper?

24 A. Yes, he did.

25 Q. Okay. After you graduated -- let me turn your

1 attention to 1984. Where were you working then?

2 A. I was working for American Color.

3 Q. What did you do with them?

4 A. I was what was called a color proofer.

5 Q. And where were you living in 1984?

6 A. I was living in the Walnut Tree Apartments at  
7 the time.

8 Q. Was your roommate Donny Kearney?

9 A. Yes, it was.

10 Q. You know him from high school?

11 A. Yes, I do.

12 Q. In March of 1984, did you come into contact  
13 again with Patrick Murphy?

14 A. Yes, I did.

15 Q. How did that occur?

16 A. I believe it happened when I was working at  
17 Sears and I came across his path.

18 Q. Okay. Did Mr. Murphy make a request of you at  
19 that point in time?

20 A. It was at a later time that he did that and,  
21 yes, he did make a request.

22 Q. Okay. What was his request he made of you?

23 A. He wanted -- he needed a place to stay. What  
24 had happened is he said that he had been in jail for ticket  
25 violations and that he had gotten in an argument with his

1 aunt and he needed a place to stay.

2 Q. Okay. Did you and your roommate agree to  
3 allow him to stay at your place for a few days?

4 A. We did.

5 Q. And do you remember him coming over there  
6 approximately March 20th of 1984?

7 A. Yes, I do.

8 Q. Did he bring anything with him at that time?

9 A. He had one luggage with him.

10 Q. And where would he stay when he went to sleep?

11 A. He would stay on the couch there.

12 Q. I believe, if you will look at the monitor, we  
13 have a diagram of the apartment that you were staying in at  
14 that time.

15 A. Okay.

16 Q. Do you see the living room area that would be  
17 when you first open the door, is that where the couch was  
18 that he slept?

19 A. I believe it was more towards the back wall  
20 over towards where my bedroom was there.

21 Q. This area here?

22 A. Yeah, I believe so, yeah.

23 Q. And this was your bedroom here?

24 A. Yes, sir.

25 Q. Okay. Let me turn your attention to the

1 evening of March 21st. What time would you have come home  
2 from working that night?

3 A. Well, I had been working ten-hour shifts with  
4 American Color, so I worked from 4:30 to 12:30 that night.  
5 So I probably -- around a little after 12:00.

6 Q. So a little after midnight?

7 A. Excuse me, a little after 12:30.

8 Q. So you actually would have gotten there the  
9 early morning hours of the 22nd of March?

10 A. Right.

11 Q. When you got there, was Patrick Murphy awake  
12 at that time?

13 A. Yes, he was.

14 Q. And what was he doing?

15 A. He was watching TV. He had been drinking a  
16 little bit. He had some, I believe, Southern Comfort and  
17 had been drinking some beer.

18 Q. And what did you do at that time?

19 A. I sat down to unwind and we talked a little  
20 bit.

21 Q. Okay. Did you have some beer, also?

22 A. No, sir.

23 Q. Okay. How was he dressed?

24 A. If I remember right, he had jeans and a plaid  
25 shirt on, if I'm not mistaken.

1 Q. So you had some conversation with him at that  
2 time?

3 A. Yes, sir.

4 Q. What types of things did he talk about?

5 A. He usually talked about sex with women. How  
6 he wanted to take women. Work them up, like start at their  
7 toes and probably eat their pussy and work their way up and  
8 then he would actually go into how he would have intercourse  
9 with them.

10 Q. Did he get pretty graphic in his details?

11 A. Yes, sir, he did.

12 Q. The words you have just explained to the jury,  
13 were those his words?

14 A. Those were his words.

15 Q. Okay. Was he the one that brought this up?

16 A. Yes, sir.

17 Q. Did he talk to you about what you and he might  
18 do that evening?

19 A. Well, he talked about if I didn't have to work  
20 the next day that we'd go out and get some pussy somewhere  
21 like that.

22 Q. Again, were those his exact words?

23 A. Those were his exact words.

24 Q. And what did you tell him?

25 A. I told him, you know, well, I had to work, so

1 I said, well, that probably isn't a good idea right now. So  
2 I'll be passing on it.

3 Q. Okay. Had he brought up the issue of sex  
4 before?

5 A. Plenty of times. He seemed to be a little  
6 obsessed with it.

7 Q. And did it make you a little bit uncomfortable  
8 at times?

9 A. Yes.

10 Q. Now, after -- what time would you say you went  
11 to bed that --

12 A. I probably went to bed about 2:30.

13 Q. At some point in time were you awakened by the  
14 front door opening?

15 A. Yes. The door did open approximately from  
16 3:00, maybe 3:30, around in there.

17 Q. Okay. Did you hear the door open and close  
18 again later in the morning?

19 A. Yes. At approximately 5:00, 5:15, around that  
20 area.

21 Q. What time would you have woke up the next day?

22 A. 7:00.

23 Q. When you got up, was Mr. Murphy still awake?

24 A. Yes, he was.

25 Q. What was he doing?



1 A. He was watching TV.

2 Q. Was he still dressed in the same clothes you  
3 had seen him that previous evening?

4 A. Yes, sir.

5 Q. Did it look like he had been asleep at all?

6 A. No.

7 Q. Did you ask him if he had been asleep?

8 A. I didn't ask him that.

9 Q. Now, did you have a knife back then?

10 A. Yes, I usually carried a knife.

11 Q. What type of knife was it?

12 A. It was a regular pocketknife. I believe it  
13 was a folding blade knife.

14 Q. Where did you keep that when you went to bed?

15 A. Well, I usually take things out of my pocket  
16 and lay it on the counter there where the kitchen was and I  
17 laid it right there on top of the counter.

18 Q. That's what you had done when you had gone to  
19 bed that --

20 A. Yes, it was.

21 Q. Okay. Now, did Mr. Murphy you said brought a  
22 suitcase with him; is that right?

23 A. That's right. He brought a suitcase with him.

24 Q. Where did he keep that suitcase?

25 A. That was kept in my room at that time.

1 Q. All right. Now, did you learn soon after the  
2 date of the 22nd was Mr. Murphy arrested for sexual assault  
3 of Jeannie Kay?

4 A. Excuse me? I didn't -- would you repeat the  
5 question, please?

6 Q. Did you learn soon after the 22nd, was Mr.  
7 Murphy arrested for the sexual assault?

8 A. Yes.

9 Q. And after he was arrested, did he attempt to  
10 contact you at all?

11 A. He tried to contact me one time and I refused  
12 to accept the charges.

13 Q. Okay. Now, what did you do with the suitcase  
14 that had been left there at your apartment?

15 A. Well, at first I went through the suitcase.  
16 It was already halfway open and went through it and  
17 discovered some hard-core pornography and condoms in his  
18 suitcase.

19 Q. When you say hard-core pornography, what type  
20 of material was it?

21 A. Sexual acts by men and women, stuff you would  
22 buy at an adult bookstore.

23 Q. Okay.

24 A. Things of that nature.

25 Q. Pretty graphic stuff?

1 A. Very explicit.

2 Q. Okay. And then eventually what did you do  
3 with the suitcase?

4 A. I believe we returned it to his mother.

5 Q. Okay.

6 MR. SHOOK: We'll pass the witness.

7 CROSS-EXAMINATION

8 BY MS. BUSBEE:

9 Q. Just a couple of questions, Mr. Brown. Is  
10 this the only -- so you were, what, 20 years old?

11 A. I was 24 at the time.

12 Q. Twenty-four. And was this the only friend  
13 that you ever had conversations about having sex with girls?

14 A. Well, no.

15 Q. And didn't you at one time have a relationship  
16 with his 15-year-old sister?

17 A. No, ma'am.

18 Q. You didn't have a sexual relationship with her  
19 when she was 15?

20 A. No, ma'am.

21 MS. BUSBEE: I'll pass the witness.

22 MR. SHOOK: That's all we have.

23 THE COURT: Thank you, Mr. Brown.

24 MR. SHOOK: May this witness be excused?

25 MS. BUSBEE: No objection.

1 THE COURT: He may. You are already  
2 sworn in. Thank you, sir. Let the record reflect this  
3 witness has been previously sworn.

4 TIMOTHY SLITER,  
5 having been duly sworn, was examined and testified as  
6 follows:

7 DIRECT EXAMINATION

8 BY MR. WIRSKYE:

9 Q. Sir, can you tell us your name, again?

10 A. Timothy Sliter.

11 Q. You are the same Dr. Sliter that testified  
12 last week in this case; is that right?

13 A. That's correct.

14 Q. And tell the members of the jury what your job  
15 is again and what you do on a day-in, day-out basis.

16 A. I work at the Southwestern Institute of  
17 Forensic Sciences, or SWIFS, here in Dallas as a supervisor  
18 of the Forensic Biology Laboratory and I perform,  
19 personally, DNA testing in criminal investigations.

20 Q. And I think you told us last week that  
21 sometimes your lab retains evidence from older cases; is  
22 that right?

23 A. Yes, usually we do.

24 Q. And you recently did some additional DNA  
25 testing involving this defendant Patrick Murphy; is that

1 right?

2 A. That's correct.

3 Q. At the request of the District Attorney's  
4 Office, were you able to locate some evidence at your lab  
5 involving a 1984 sexual assault with a complainant that was  
6 named Jeannie Savage?

7 A. Yes. Our records, Jeannie Savage Kay.

8 Q. And what type of evidence were you able to  
9 locate?

10 A. I was able to identify two items of evidence  
11 that had been submitted in 1984, a vaginal swab and an oral  
12 swab.

13 Q. And how were those items stored?

14 A. They were stored, packaged individually, in  
15 small glass vials, which was the custom at that time and  
16 initially they would have been stored in a frozen state and  
17 then at a point in time probably 1988 or '89 they were  
18 removed from frozen storage into an archived room  
19 temperature storage. And I located them in our room  
20 temperature storage.

21 Q. Would the room temperature storage versus the  
22 frozen storage or the age of the particular piece of  
23 evidence, would that inhibit your ability to obtain a DNA  
24 profile off that evidence?

25 A. No. As long as items are stored dry, we would

1 expect to get DNA profiles from them for decades. We  
2 routinely do testing on evidence stored in this way from the  
3 early 1980's and we are generally successful at it. Of  
4 course, if the evidence was in a compromised state at the  
5 original time, it's not going to get any better having been  
6 stored for 20 years.

7 Q. The items of evidence that you have told us  
8 about, do they contain the unique lab number that was  
9 assigned this case back in 1984?

10 A. Yes. That was 84P0583.

11 Q. And no signs of any irregularities with either  
12 of those pieces of evidence?

13 A. No.

14 Q. Tell us again exactly what two pieces of  
15 evidence did you find?

16 A. The one item our number K-1, was a vaginal  
17 swab. That would be a swab which was collected by doctors  
18 at Parkland Memorial Hospital in the OB/GYN Unit, the  
19 emergency room. And it was originally screened for the  
20 presence of spermatozoa, or seminal fluid. And it tested  
21 positive for seminal fluid at that time in 1984.

22 The second item was an oral swab which  
23 was again collected by the doctors at Parkland. It was our  
24 item No. K-4. It was originally screened for seminal fluid,  
25 but it did not contain seminal fluid. And so it was

1 processed in addition to the vaginal swab essentially as a  
2 standard in the case.

3 Q. Okay. Back in 1984 was DNA testing available  
4 to labs such as yours?

5 A. No.

6 Q. And you processed these items using the PCR  
7 DNA technique that you told us about last week; is that  
8 right?

9 A. That's correct.

10 Q. And the technique in this case was applied  
11 properly?

12 A. That's correct.

13 Q. What were you able to get from those two  
14 swabs?

15 A. From the oral swab -- let me say in both cases  
16 I processed them using a slightly different process than we  
17 would use for a bloodstain, because in the case of seminal  
18 fluid it generally comes as a mixture of cellular material  
19 from the complaining witness and the smaller amount of  
20 cellular material from the semen.

21 We process it in a two-step process which  
22 gives us what we refer to as fractions. One fraction would  
23 be enriched for the DNA from the complaining witness, which  
24 comes in cells referred to as epithelial cells. The other  
25 fraction would be enriched from the DNA from spermatozoa.

1                   And this process is carried out -- the  
2 DNA in spermatozoa, the spermatozoa consists of very tightly  
3 packed DNA. The spermatozoa doesn't release or don't  
4 release their DNA, except under fairly stringent chemical  
5 conditions, whereas the epithelial cells from the  
6 complaining witness would release the DNA under fairly mild  
7 chemical conditions, so that's how we do it.

8           Q.       So when you look at a piece of evidence like  
9 that, you are kind of able to separate into the male  
10 fraction and female fraction?

11          A.       Yes. And often it's not a perfect separation.  
12 We would normally expect or we wouldn't be surprised to see  
13 some incomplete separation, so we call them enriched  
14 fractions, not pure fractions.

15          Q.       What were you able to find from the oral swab  
16 of Jeannie Savage Kay?

17          A.       From the male fraction I got no DNA and no DNA  
18 profile. From the epithelial cell fraction I got a female  
19 DNA profile.

20          Q.       When you looked at the vaginal swab, what did  
21 you find?

22          A.       When I processed the vaginal swab, when I did  
23 the processing, I, in addition to carrying out this  
24 chemical extraction process, I also prepared a microscope  
25 slide from the male fraction in order to determine if there



1 were actually spermatozoa present in the sample and I did  
2 detect spermatozoa.

3 So the female fraction gave DNA which was  
4 a mixture of DNA, mostly from a female which had the same  
5 DNA profile as the oral swab. And then there was a smaller  
6 amount of DNA from a male.

7 The male fraction gave a DNA profile that  
8 corresponded to a single male. I didn't detect any DNA from  
9 the complaining witness and that DNA profile was the same  
10 DNA profile as I had previously obtained from the buccal  
11 swab of Patrick Murphy.

12 Q. You already had his buccal swab or the profile  
13 from the buccal swab on file; is that correct?

14 A. Yes. I compared it. I didn't process that  
15 buccal swab again. I simply compared it to the results that  
16 I had obtained in 2001.

17 Q. And it was a match to the male fraction on the  
18 vaginal swab?

19 A. Yes.

20 Q. You told us last week that numbers give  
21 meaning to matches.

22 A. Yes.

23 Q. The higher the number, the more meaningful  
24 they are. What were the numbers associated with the match  
25 involving Patrick Murphy?

1           A.       I used the Texas Department of Public Safety  
2 data base and looked in -- compared that profile or  
3 calculated the random match statistic for Texas Caucasians,  
4 African-Americans, and Hispanics. The conservative number  
5 was seen in Texas Caucasians and that was one in 36  
6 trillion. And what that means is that if I had a population  
7 of people equal to about six thousand times the population  
8 of the Earth, I would expect one person in that population  
9 to have this particular DNA profile.

10           Q.       The items of evidence that you told us about,  
11 both, I guess, the buccal swab and the two swabs from the  
12 rape exam, are those items still over at your lab for  
13 retesting if anybody disagrees with your results?

14           A.       Yes.

15           Q.       Did you prepare a written report that reflects  
16 the findings that you told us about just now?

17           A.       Yes, I did.

18                   MR. WIRSKYE: May I approach, Your Honor?

19                   THE COURT: You may.

20           Q.       (By Mr. Wirskye) Doctor, let me show you a  
21 copy of the report marked for identification as State 1013.  
22 I'll have you look at that and just make sure that that is,  
23 indeed, an exact duplicate of your report?

24           A.       Yes, it is.

25                   MR. WIRSKYE: Your Honor, at this time we

1 offer State 1013.

2 MS. BUSBEE: May I? I believe that this  
3 is the report that they previously tendered to me, Your  
4 Honor. No objection.

5 THE COURT: State 1013 shall be admitted.

6 Q. (By Mr. Wirskye) One last thing. Do your  
7 records in this case reflect that in July of 2001 that you  
8 sent some items of evidence to the Department of Public  
9 Safety Lab in Houston?

10 A. Yes, they do.

11 Q. The blood sample of Larry Harper and then the  
12 buccal swabs of the other Texas Seven, including Patrick  
13 Murphy?

14 A. That's correct.

15 Q. Did that by Federal Express?

16 A. That's correct.

17 Q. The Federal Express number would be  
18 821431225205; is that correct?

19 A. That's correct.

20 MR. WIRSKYE: I'll pass the witness.

21 MS. BUSBEE: No questions.

22 THE COURT: Thank you, Dr. Sliter.

23 MR. SHOOK: We'll call Patrick  
24 Moczygemba.

25 PATRICK MOCZYGEMBA,

1 having been duly sworn, was examined and testified as  
2 follows:

3 DIRECT EXAMINATION

4 BY MR. SHOOK:

5 Q. Tell us your name, please.

6 A. My name is Patrick Moczygemba.

7 Q. How are you employed, sir?

8 A. At the current time I'm unemployed.

9 Q. Okay. Let me turn your attention back to  
10 December of 2000 and ask how you were employed at that time?

11 A. I was the Assistant Maintenance Supervisor at  
12 the Connally Unit.

13 Q. Tell the jury what the Connally Unit is.

14 A. The Connally Unit is the maximum facility  
15 located in Karnes County.

16 Q. And where is Karnes County located?

17 A. Approximately halfway between San Antonio and  
18 Corpus Christi.

19 Q. About 60 miles or so southeast of San Antonio?

20 A. Yes, sir, that's correct.

21 Q. Were you born and raised in that area?

22 A. Yes, sir, I was.

23 Q. Prior to working there at the prison, what  
24 line of work were you in?

25 A. I was a heavy equipment operator for a local

1 uranium company.

2 Q. Now, you said that you were the assistant  
3 maintenance supervisor?

4 A. Yes, sir, that's correct.

5 Q. How long had you worked there at the Connally  
6 Unit?

7 A. At the time it was five years.

8 Q. Okay. You said that -- what type of unit was  
9 that prison union?

10 A. It was a maximum facility.

11 Q. What types of inmates are housed there?

12 A. We have anything from a line one all the way  
13 up to ad seg units.

14 Q. Okay. And we're talking about people that  
15 have been convicted of felonies?

16 A. Yes, sir.

17 Q. Serving long prison terms?

18 A. That's correct.

19 Q. Explain to the jury in a Texas prison such as  
20 the Connally Unit, do the inmates have jobs?

21 A. Yes, sir, that's correct. Each inmate has a  
22 certain type of job. They either work in the kitchen where  
23 they cook the food or maintenance or they do work in the  
24 laundry. They have a job somewhere in the unit. They just  
25 can't sit still.

1 Q. Are the prison units, do they operate like a  
2 city unto themselves?

3 A. Yes, sir, that's correct.

4 Q. Do you have area craftsmen, people in skilled  
5 positions, that work there in the prison?

6 A. Yes, sir.

7 Q. And do they -- are they assigned there to the  
8 maintenance department?

9 A. Yes, sir, they are.

10 Q. What types of craftsmen do you have working  
11 there?

12 A. We have heating ventilation, air conditioning,  
13 plumbing. We have carpenters, we have electricians,  
14 basically everything you need to repair a city, that's what  
15 we have right there.

16 Q. And these are the people that work under your  
17 supervision there in the prison?

18 A. Yes, sir.

19 Q. And are inmates employed that work under these  
20 particular craftsmen's supervision?

21 A. Yes, sir, they are.

22 Q. How is it that an inmate will come to work in  
23 that particular department under their supervision?

24 A. What they basically do, they send like an  
25 application or a letter of their qualifications and it goes

1 to the maintenance supervisor and we kind of pick through  
2 them and try to pick out the best one suited for the job,  
3 typical job, that we're going to assign them for.

4 Q. And did you have some inmates that worked in  
5 the maintenance department in the warehouse area, also?

6 A. Yes, sir, we did.

7 Q. As part of your training there at the prison,  
8 are you trained to deal with hostage situations?

9 A. Yes, sir, we are.

10 Q. And what type of training did you receive?

11 A. We received -- right at the very beginning, we  
12 go through a six-week training course and they basically  
13 teach us everything how to handle offenders, how to deal  
14 with them in crisis intervention, basically hostage,  
15 everything.

16 Q. And one of the things you are trained to do is  
17 look for weapons; is that right?

18 A. Yes, sir, that's correct.

19 Q. Are weapons found in virtually every place in  
20 the penitentiary?

21 A. Yes, sir, they are.

22 Q. And these are weapons that the inmates make?

23 A. Yes, sir.

24 Q. What type of weapons have you found in your  
25 experience?

1           A.       There's anything from weapons fashioned out of  
2       plexiglass all the way to pieces of metal or wire. Anything  
3       that they can fashion a weapon out of, they will fashion it.

4           Q.       And what's the names for these weapons?

5           A.       They are called shanks.

6           Q.       Shanks? Okay. Now, are the inmates that work  
7       there on any occupation in prison, are they actually paid  
8       money?

9           A.       No, sir, they are not.

10          Q.       How is it -- how many inmates did you have  
11       working for you under the maintenance department back in  
12       December of 2000?

13          A.       I think it was around 60 or so.

14          Q.       Okay. What would they do during the day?

15          A.       During the day we usually pull out -- each  
16       craftsman would pull out two to three offenders and they  
17       will assist the craftsmen in doing their workload.

18          Q.       Would the craftsmen go throughout the prison  
19       and then take these inmates with them?

20          A.       Yes, sir, that's correct.

21          Q.       Now, looking at State Exhibit 44, which is the  
22       board there behind you, did six of those inmates work in the  
23       maintenance department?

24          A.       Yes, sir, that's correct.

25          Q.       Let's start with George Rivas there. What was



1 his job in the maintenance department?

2 A. He was like the purchaser. He did the  
3 paperwork in the office.

4 Q. Was he more or less a clerk position?

5 A. Yes, sir, he was a clerk.

6 Q. And he worked in your offices there; is that  
7 right?

8 A. Yes, sir, that's correct.

9 Q. As a clerk in your offices, would he be in the  
10 room when the phone calls were made, that sort of thing?

11 A. Yes, sir, that's correct.

12 Q. Were part of his duties to keep an inventory  
13 of the materials that you had?

14 A. Yes, sir.

15 Q. In your maintenance offices was there a  
16 warehouse attached to it?

17 A. Yes, sir, there was.

18 Q. What types of things were kept in that  
19 warehouse?

20 A. Basically, everything just to repair any type  
21 of piece of equipment that we have there. It's nuts, bolts,  
22 wire. You name it, it was in there.

23 Q. If you were running low on supplies, who would  
24 notify you of that?

25 A. George Rivas would.

1 Q. Okay. And how would you resupply the  
2 maintenance department?

3 A. We either placed an order or we used the State  
4 truck to go to town to pick stuff up.

5 Q. Just go to the Wal-Mart --

6 A. Yes, sir.

7 Q. -- or store like that?

8 A. Yes, sir, that's correct.

9 Q. Did that State truck stay inside the prison or  
10 outside?

11 A. It stayed outside most of the time.

12 Q. And how was it brought in?

13 A. It was brought in through the back gate.

14 Q. Okay. And it would only be brought in on  
15 occasions when you needed to bring in supplies?

16 A. Yes, sir, that's correct.

17 Q. Would Mr. Rivas know or would he be able, if  
18 he paid attention, have knowledge as to when you were going  
19 to need supplies?

20 A. Yes, sir, that's correct.

21 Q. Now, did he have access to the warehouse  
22 department, also?

23 A. Yes, he did.

24 Q. What other inmates on the board worked in the  
25 warehouse?

1           A.       Joseph Garcia, Randy Halprin, and Larry  
2 Harper, they all did. They all worked in the warehouse  
3 area.

4           Q.       What did they do in the warehouse area?

5           A.       Joseph Garcia and Larry Harper handed out  
6 parts at the window and they charged them out to the job.

7           Q.       Okay. When you say parts, you are talking  
8 about tools and things like that?

9           A.       Well, the toolman was Halprin. He handed out  
10 tools.

11          Q.       Okay. And just on a daily basis they would be  
12 there working in the warehouse?

13          A.       Yes, sir.

14          Q        What about Donald Newbury, what did he do in  
15 the maintenance department?

16          A.       He worked with the lock techs, fixing locks  
17 and detention locks in the prison.

18          Q.       Okay. And was he one of these inmates that  
19 would go to different parts of the prison and work on --  
20 under the supervision of a craftsman?

21          A.       Yes, sir, that's correct.

22          Q.       And Patrick Murphy, what did he do?

23          A.       He was a carpenter.

24          Q.       Do you see Mr. Murphy here in the courtroom?

25          A.       Yes, sir, I do.

1 Q. Would you point him out, please?

2 A. He's sitting at the end of the table right  
3 there.

4 Q. The man there with the blue coat, glasses,  
5 long brown hair?

6 A. That's correct.

7 MR. SHOOK: Your Honor, if the record  
8 could reflect the witness has identified the defendant.

9 Q. (By Mr. Shook) And he worked as a carpenter?

10 A. Yes, sir, that's correct.

11 Q. Was there a carpenter shop there located near  
12 your offices?

13 A. Yes, sir, there was.

14 Q. What types of things would he build?

15 A. He would basically repair things, build  
16 picture frames for the plaques and everything that we needed  
17 for the offices.

18 Q. And was he skilled at his job?

19 A. Yes, he was.

20 Q. These -- of the -- one other inmate up there,  
21 Michael Rodriguez, did he actually work in the maintenance  
22 department?

23 A. No, he didn't.

24 Q. What did he do in the prison?

25 A. He worked on the -- he worked on the inside

1 yard squad.

2 Q. What does the inside yard squad do?

3 A. They are the ones that mow the grass, take  
4 care of the flowerbeds and stuff like that around the unit  
5 inside the fence.

6 Q. Would -- that would enable him to move around  
7 inside the fence?

8 A. Yes, sir.

9 Q. To different areas in the prison?

10 A. Yes, sir.

11 Q. Okay. Who had worked at the time of December  
12 2000, who had worked in the maintenance department the  
13 longest?

14 A. Probably Murphy.

15 Q. Okay. And how long had George Rivas been  
16 there?

17 A. Probably about two years, I would say.

18 Q. Okay. Had the others come in after Mr. Rivas  
19 had arrived?

20 A. Yes, sir.

21 Q. Had you had any problems, any large problems,  
22 with Mr. Murphy back in December?

23 A. I -- basically we had problems in the  
24 carpenter shop. There was always things being hidden in the  
25 shop. You had to shake down the shop pretty often just to

1 make sure -- to keep them honest.

2 Q. Was Mr. Murphy the type of inmate that you  
3 trusted?

4 A. Not really.

5 Q. Okay. I want to show you some photographs.  
6 You have seen these before outside the presence of the jury?

7 A. Yes, sir.

8 Q. They are marked State Exhibits 500 through 542  
9 and State Exhibits 545 and 547 through 550. Do you  
10 recognize those as being photos of the prison unit, the  
11 maintenance department, both interior and exterior?

12 A. Yes, sir, that's correct.

13 MR. SHOOK: Your Honor, we'll offer those  
14 exhibits at this time.

15 MS. BUSBEE: We've seen them, Your Honor,  
16 no objection.

17 THE COURT: State Exhibits 500 through  
18 542, 545 and 547 through 550 shall be admitted.

19 Q. (By Mr. Shook) I want to show you what has  
20 been marked as State Exhibit 544. Is that a general drawing  
21 overview of how the prison is laid out?

22 A. Yes, sir, that's correct.

23 Q. And then State Exhibit 543, is this a diagram  
24 of the maintenance department and the warehouse area?

25 A. Yes, sir, that's correct.

1 MR. SHOOK: We'll offer 543 and 544 at  
2 this time.

3 MS. BUSBEE: No objection.

4 THE COURT: Nos. 544 and 543 shall be  
5 admitted.

6 Q. (By Mr. Shook) I'll show you a poster which  
7 has been marked State Exhibit 582, do you recognize the  
8 names on that poster?

9 A. Yes, sir, I do.

10 Q. Are these the names of the persons that worked  
11 in the maintenance department, as well as the guards that  
12 were taken as hostage on December 13, 2000?

13 A. Yes, sir, that's correct.

14 MR. SHOOK: We'll offer State Exhibit  
15 582.

16 MS. BUSBEE: No objection, Your Honor.

17 THE COURT: No. 582 shall be admitted.

18 Q. (By Mr. Shook) Mr. Moczygemba, let me show  
19 you State Exhibit 500. Is this an aerial view of the prison  
20 unit?

21 A. Yes, sir, that's correct.

22 Q. This -- is this the parking lot area?

23 A. Yes, sir.

24 Q. Okay. And how many gates lead into the  
25 prison?

1 A. We have the main front entrance gate and then  
2 the rear gate and that's the only two entrances to the unit.

3 Q. The main entrance gate, is that here?

4 A. Yes, sir.

5 Q. And is that the way that you would come in  
6 when you come to work?

7 A. Yes, sir.

8 Q. Now, the other gate in which deliveries were  
9 made, where was that located?

10 A. That's located to the back of the unit, right  
11 in that area right there.

12 Q. This area here?

13 A. Yes, sir.

14 Q. And the closest town to the prison unit, what  
15 is that?

16 A. It's a town called Kenedy.

17 Q. How far from the prison unit is that?

18 A. I believe about three miles or so.

19 Q. Let me show you State Exhibit 501. Does this  
20 kind of show the area from behind the prison?

21 A. Yes, sir.

22 Q. Is that the back gate with the picket tower?

23 A. Yes, it is.

24 Q. Could you tell the jury what a picket tower  
25 is?



1           A.       The picket is a tall structure there. It's  
2 made -- it's probably about 60 feet tall and it's got an  
3 outlook up on top where the person inside can watch over the  
4 whole unit.

5           Q.       Now, obviously, there are guards that work  
6 there. The ones that are inside the unit itself, do they  
7 carry firearms?

8           A.       No, sir, they don't.

9           Q.       Where are the firearms kept in the prison?

10          A.       They are kept at that back gate right there  
11 and the armory up at the entrance, main entrance of the  
12 building, of the prison.

13          Q.       So they are actually kept outside the gated  
14 area?

15          A.       Yes, sir.

16          Q.       And what type of weapons do the guards keep  
17 out there?

18          A.       They keep handguns, shotguns, and AR-15s.

19          Q.       Okay. Do inmates -- do some of the inmates'  
20 jobs have to do with working in the fields outside the  
21 prison?

22          A.       Yes, sir, that's correct.

23          Q.       When they are escorted outside the fields, do  
24 the guards that are with them, do they retrieve weapons?

25          A.       Yes, sir, they do.

1 Q. And how do they do that?

2 A. There's a rope that's attached and they have a  
3 basket and the rope is in the basket is lowered down with  
4 weapons inside.

5 Q. Okay. So there's actually no firearms inside  
6 the prison itself?

7 A. That's correct.

8 Q. Let me show you State Exhibit 502. What do we  
9 see in this photograph?

10 A. You see one of the dorms and both dorms, the  
11 maintenance shop, and I think that's 4 building right there.

12 Q. These buildings that we see down in the  
13 center, who is housed in there?

14 A. Those are closed -- not closed custody, but  
15 they are a little bit higher class inmates that are  
16 considered a threat. So they stay in those units.

17 Q. All right. These large buildings here, what  
18 are those?

19 A. Those are the dorms. Those are the offenders  
20 that have or are considered not a threat. They stay in  
21 those units right there.

22 Q. Do they have more freedom of movement there?

23 A. Yes, sir, they do.

24 Q. Is that where Mr. Murphy stayed?

25 A. Yes, sir, that's correct.

1 Q. You said the maintenance department, is that  
2 this building --

3 A. Yes, sir.

4 Q. -- right here?

5 A. Yes, sir.

6 Q. And that's where you were headquartered?

7 A. Yes, sir.

8 Q. When Mr. Murphy would be working during the  
9 day, did he stay in this area?

10 A. Yes, he did.

11 Q. Okay. Some of the inmates would actually go  
12 to different parts of the prison?

13 A. Yes, sir.

14 Q. But his job required him to stay there?

15 A. Yes, sir, that's correct.

16 Q. State Exhibit 503. Again, that's the back  
17 gate where the deliveries would come in and out of?

18 A. Yes, sir.

19 Q. This road here, where does that lead around  
20 to?

21 A. That goes around to the maintenance shop right  
22 there and the backside of the education building.

23 Q. And State Exhibit 504, is that a closer view  
24 of the maintenance department?

25 A. Yes, sir, it is.

1 Q. If you are going to have a vehicle, did you  
2 use vehicles to get out to different parts of the prison,  
3 other than that truck?

4 A. No, sir. That's the only vehicle that came in  
5 there. At least our State vehicle, that's the only one, the  
6 only place it came in.

7 Q. Okay. Let me show you State Exhibit 508. Is  
8 this a view of your offices?

9 A. Yes, sir, it is.

10 Q. How many people worked inside that office?

11 A. The maintenance supervisor, the coordinator,  
12 and we usually had two offenders that worked inside the  
13 office.

14 Q. Okay. Was your supervisor there on December  
15 13th?

16 A. No, she wasn't.

17 Q. So you were in charge at that time?

18 A. Yes, I was.

19 Q. Let me show you State Exhibit 543. Is this  
20 kind of a diagram of the maintenance area?

21 A. Yes, it is.

22 Q. Okay.

23 MR. SHOOK: Could the witness stand up to  
24 point out some things on the diagram?

25 THE COURT: He may.

1 Q. (By Mr. Shook) If you would just kind of, so  
2 all the jurors can see, point or where is the entrance to  
3 the maintenance department?

4 A. The entrance to the maintenance shop is right  
5 here. It's a door that goes in right here.

6 Q. And what are these areas right here?

7 A. This is where the coordinator, the two  
8 offenders that work in this area right here.

9 Q. Is that what we're seeing here in the  
10 photograph?

11 A. Yes, it is.

12 Q. What about this area back here?

13 A. This is the maintenance supervisor's office  
14 right here.

15 Q. And where did you office?

16 A. I was in the same office as the maintenance  
17 supervisor.

18 Q. Okay. Now, this area back in here, that's  
19 titled warehouse; is that right?

20 A. Yes, sir, that's correct.

21 Q. And is that the warehouse area you described  
22 earlier?

23 A. Yes, I did.

24 Q. And who was working back there?

25 A. Halprin, Harper, and Garcia.

1 Q. Okay. And Mr. Rivas worked in this area?

2 A. He worked in this area right here and in this  
3 corner.

4 Q. And he was -- also had access to the  
5 warehouse?

6 A. Yes, he did.

7 Q. What is this area over here?

8 A. This area right here looks into the shop.

9 Q. Okay. What type of shop is that?

10 A. The middle part was a general area where we  
11 did all our maintenance and then beyond it was a caged-in  
12 area called -- it was where the carpenter shop was.

13 Q. Is that where Mr. Murphy worked?

14 A. Yes, that's correct.

15 Q. State Exhibit 509, does that show another view  
16 of the desk there in the maintenance department?

17 A. Yes, it does.

18 Q. State Exhibit 511, that would be where you  
19 were officing; is that right?

20 A. Yes, sir, that's correct.

21 Q. Now, 513, does that show the door that  
22 actually leads to the warehouse?

23 A. Yes, it does.

24 Q. That's this door here?

25 A. Yes, sir.

1 Q. The toolroom, what's in there?

2 A. That's all types of tools that can be used to  
3 cut wire or cut metal or cut any type of material at all  
4 that could be used for an escape.

5 Q. Let me show you State Exhibit 514. What do we  
6 see in that photograph?

7 A. That is our toolroom.

8 Q. And 515?

9 A. Just a closer view of the toolroom.

10 Q. Are these screwdrivers that are on the wall  
11 here?

12 A. Yes, sir.

13 Q. They look to have yellow handles with some  
14 type of red on them?

15 A. Each one of the tools has got its own specific  
16 number where it can be tracked. And it's tracked from the  
17 time it's bought and put on the wall to the time it's either  
18 broken or destroyed.

19 Q. Okay. Now, let me turn your attention  
20 specifically to December 13th of 2000. What time would you  
21 arrive there at work?

22 A. I usually arrived at work about fifteen  
23 minutes to 7:00.

24 Q. Is that about the same time that the other  
25 craftsmen would report in?

1 A. Yes, sir, that's correct.

2 Q. And what time would the inmates that are  
3 assigned to the maintenance department arrive?

4 A. They usually get to the shop about 7:00.

5 Q. Okay. What is the procedure from getting them  
6 to their cells or the dorm they stay in to where you were in  
7 the maintenance department?

8 A. It was called a call-out. We had an officer  
9 that was assigned early, he would come in early, usually  
10 about 6:30 in the morning. And we have a list of offenders  
11 that we needed to pull out that day. And his job was to  
12 pull them out early in the morning.

13 Q. Okay. Where would he, as you say, pull them  
14 out from?

15 A. They would -- he would go to the buildings and  
16 pull them each one out from the buildings, you know, he'd  
17 just escort them up to A-turnout.

18 Q. And you used the term "A-turnout", what is  
19 that?

20 A. A-turnout is a determination point where it  
21 changes from the inside of the compound to the outside to  
22 where you basically go to maintenance.

23 Q. Okay. And how many guards would escort the  
24 inmates, actually, to the maintenance department?

25 A. One.



1 Q. Just one?

2 A. Yes, sir.

3 Q. Okay. And did Mr. Murphy, along with the  
4 others we see, except for Mr. Rodriguez, arrive at their  
5 regular time on December 13th?

6 A. Yes, they did.

7 Q. On that day was there anything unusual about  
8 what happened in the morning?

9 A. It was a very cold and icy day that day. Some  
10 of my craftsmen didn't show up that day because it was  
11 really bad weather that morning.

12 Q. Was there anything going on in the maintenance  
13 department itself? Anything coming up?

14 A. We had an ACA. We had to pass an ACA  
15 accreditation and we were just basically getting prepared  
16 for it and cleaning up after it.

17 Q. What type of accreditation was that?

18 A. It was American Correctional Association. You  
19 know, they just check out the unit and make sure we are  
20 following all the rules and credentials and everything else  
21 was up to par.

22 Q. Did you have any special plans on preparing  
23 for that inspection that day?

24 A. Yes, we did. We were preparing to seal the  
25 floor in the shop to keep the dust down so our area would

1 look more presentable.

2 Q. Okay. And that's what you were working on  
3 that day?

4 A. Yes, sir.

5 Q. About what time do you take a lunch break  
6 every day?

7 A. Usually we had about a quarter to 12:00 --  
8 well, that day I think it was 11:30. About 11:15 or so we  
9 start getting the inmates out of the shop. We shake them  
10 down and strip search them and line them up outside the shop  
11 and take them back to A-turnout.

12 Q. So every day at lunch they go to another  
13 location to eat; is that right?

14 A. Yes, sir, that's correct.

15 Q. And the procedure is to search them before  
16 they leave?

17 A. Yes, sir, that's correct.

18 Q. And then they are taken back to A-turnout?

19 A. Yes, sir.

20 THE COURT: Mr. Shook, speaking of lunch,  
21 now that you brought the subject up, it's time for us to  
22 take our lunch break. We stand in recess until 1:15.

23 (Recess)

24 [Jury in]

25 THE COURT: Please be seated. Mr. Shook?

1 Q. (By Mr. Shook) Again, what time is it that  
2 the -- when is your lunch break?

3 A. From 11:30 to 12:30.

4 Q. And is that the same time every day?

5 A. Yes, sir.

6 Q. And that's the time the prisoners are normally  
7 taken to lunch?

8 A. Yes, sir.

9 Q. Where do the craftsmen eat in the prison?

10 A. They either eat in the officer's dining room  
11 or they go to the town to eat or they eat in their vehicles.

12 Q. Vehicles outside in the parking lot?

13 A. Yes, sir.

14 Q. When they come back, do they generally come  
15 back somewhere between 12:00 and 12:30?

16 A. Yes, sir, just depends. If they have  
17 paperwork to do, they sometimes come in early to do their  
18 paperwork at lunchtime.

19 Q. Will they oftentimes come back in one at a  
20 time or two at a time?

21 A. Yes, sir. They usually come in one at a time,  
22 sometimes two at a time.

23 Q. On this particular date did all the craftsmen  
24 leave to go eat at 11:30?

25 A. Yes, sir, they did.

1 Q. Did all the inmates go eat at that time?

2 A. All the inmates went, except for the six that  
3 I kept back.

4 Q. Okay. And those are George Rivas, Donald  
5 Newbury, Patrick Murphy, Joseph Garcia, Randy Halprin, and  
6 Larry Harper?

7 A. That's correct.

8 Q. And what was the reason you were keeping them  
9 back that day?

10 A. We had started sealing the floor and taking  
11 stuff apart to seal the floor, so I kept them back a little  
12 bit longer, just so we could finish the procedure.

13 Q. And is this something that they had known  
14 about prior to you making that decision?

15 A. We had talked about it earlier in the day.

16 Q. Okay. Now, they were going to get to eat  
17 lunch at some point in time; is that right?

18 A. Yes, sir, that's correct.

19 Q. So the craftsmen went to eat and the rest of  
20 the inmates went to eat and it was just you and those six?

21 A. Yes, sir, that's correct.

22 Q. You didn't see Michael Rodriguez around the  
23 area at that time, did you?

24 A. No, sir, I didn't.

25 Q. Okay. Where were you located during the lunch

1 hour?

2 A. I was sitting in my office, doing paperwork.

3 Q. Did one of the inmates come and ask you to --  
4 make a request of you?

5 A. Yes, he did.

6 Q. Which one was that?

7 A. Rivas.

8 Q. And what did he ask you to do?

9 A. He asked me to come back in the warehouse and  
10 identify a motor for me to look at and see if they were  
11 supposed to move it or not.

12 Q. Anything seem suspicious to you at that time?

13 A. Not at that time.

14 Q. Did you go with Mr. Rivas back to the  
15 warehouse?

16 A. Yes, I did.

17 Q. When you went back to the warehouse, where is  
18 it they had you go?

19 A. Basically when I walked to the door I took a  
20 little short right and there was a table and the motor was  
21 under it and they asked me to look at that motor.

22 Q. All right. Let's look at the poster for a  
23 minute. I'll show you State Exhibit 543 again. If you  
24 could, just show the jury where you went through the door  
25 and where you went to the motor?

1           A.       I was in my office right here and I went out  
2 and through this door right here and the table was in this  
3 area right here.

4           Q.       So you just had to go a short distance?

5           A.       Yes, sir.

6           Q.       Now, what inmates did you see near or around  
7 the table at that time?

8           A.       Joseph Garcia, Randy Halprin, Larry Harper,  
9 and Rivas were all standing in that particular area.

10          Q.       Okay. Let me show you State Exhibit 516. Is  
11 this the area where that table was located?

12          A.       Yes, sir.

13          Q.       And the table is not there right now; is that  
14 right?

15          A.       That's correct.

16          Q.       It would have been in this area?

17          A.       Yes, sir, that's correct.

18          Q.       The door you would have come out would be on  
19 the other side of these file cabinets?

20          A.       Yes, sir.

21          Q.       What's around the corner there?

22          A.       As you go around that corner, you would be  
23 going toward the electrical room.

24          Q.       Did you see Donald Newbury around?

25          A.       Yes. He was laying -- taking apart a shelf up

1 to -- further towards to my left.

2 Q. These shelves here --

3 A. Yes, sir.

4 Q. -- in the background?

5 A. Yes, sir.

6 Q. And then those other inmates were Garcia,  
7 Rivas, Halprin, and who else?

8 A. Harper.

9 Q. Harper, were all in the immediate vicinity?

10 A. Yes, sir.

11 Q. Did you see the motor they were talking about?

12 A. Yes, sir, I did.

13 Q. What did you do at that time?

14 A. At that time I bent over to get a closer look  
15 at it and when I did, all of a sudden I just, you know,  
16 lights went out. I just found myself on the floor when I  
17 regained consciousness.

18 Q. So you were knocked out at that time?

19 A. Yes, sir, I was.

20 Q. Where were you hit?

21 A. On the -- across the ear and the back of the  
22 head.

23 Q. You were hit hard enough to be knocked  
24 unconscious?

25 A. Yes, sir.

1 Q. Could you feel what type of instrument you  
2 were hit with?

3 A. I could not tell.

4 Q. Did it cause some damage to your head?

5 A. Yes, it did. It almost cut my ear in half.

6 Q. Your ear was severed badly?

7 A. Yes, sir, it was.

8 Q. Did you later have to have stitches to sew it  
9 back?

10 A. Yes, sir, that's correct.

11 Q. When you came to, what was going on?

12 A. I was struggling with Rivas and I was trying  
13 to get away from him.

14 Q. And how did Rivas have a hold of you?

15 A. I was basically laying on his stomach and he  
16 had me in a bearhug.

17 Q. Did you see any of the other inmates around?

18 A. Yes. They were all coming towards me, trying  
19 to help Rivas. And I was struggling, you know, with Rivas  
20 and then Garcia put a knife to my throat.

21 Q. Prior to having a knife put to your throat,  
22 did you knock any of them off of you?

23 A. I think -- if I remember correctly, I think I  
24 kicked Harper in the face, I believe. He was bending over,  
25 trying to reach in to help Rivas.



1 Q. And then Garcia put a knife to your throat?

2 A. That's correct.

3 Q. What type of knife was this?

4 A. It was a shank made out of metal with a handle  
5 wrapped around with like a cloth handle.

6 Q. These are some of those homemade weapons that  
7 you are always on the lookout for?

8 A. That's correct.

9 Q. Can these types of weapons be quite deadly?

10 A. Excuse me?

11 Q. Are these type of weapons, can they be quite  
12 deadly?

13 A. Yes, they are. It was pinpoint razor sharp.

14 Q. Once you felt that shank up next to your  
15 throat, did Garcia say anything to you?

16 A. Yes, he did. He said, "We can end it right  
17 now or if we end it right now for you, we're going to have  
18 to do -- everybody else is going to get the same thing."

19 Q. Did you take his threats seriously?

20 A. Yes, I did.

21 Q. When he said, "We can end it right now" --  
22 what was the other part of his threat?

23 A. He said, "If we finish you off, we will have  
24 to do that to everybody else."

25 Q. Okay. And what did you take that to mean?

1           A.       I took that that if they kill me, they were  
2 going to kill everybody else that walks in that door.

3           Q.       What's the next thing that happened to you?

4           A.       They started removing my clothes and took off  
5 my boots, took off my clothes, and stuff, and they tied me  
6 up.

7           Q.       Okay. How did they tie you?

8           A.       They tied me up with my hands in front and  
9 they put a gag in my mouth and a pillow case over my head.

10          Q.       What type of gag was this they put in your  
11 mouth?

12          A.       It was part of a pillow case with duct tape  
13 wrapped around it.

14          Q.       Did they shove it in your mouth pretty deeply?

15          A.       Yes. They shoved it in pretty deep and they  
16 tied it pretty tight, so I couldn't make any noise.

17          Q.       And then they put a pillow case over your  
18 head?

19          A.       Yes, sir.

20          Q.       Were you bleeding a lot from your ear?

21          A.       Yes, I was.

22          Q.       After they had you tied and gagged and put the  
23 pillow case over you, what did they do then?

24          A.       They carried me to the electric room.

25          Q.       Let me show you State Exhibit 517. Does this

1 show -- you were just on the other side of this trash can  
2 when this happened; is that right?

3 A. Yes, sir, that's correct.

4 Q. As you go down this pathway here, does that  
5 lead to the electrical room?

6 A. Yes, sir, it does.

7 Q. Let me show you 518. Is this a photograph how  
8 -- looking back the opposite way?

9 A. Yes, sir, it is.

10 Q. Is the electrical room located right here?

11 A. It's on the other side of that round thing  
12 right there.

13 Q. So they brought you down this pathway?

14 A. Yes, sir, they did.

15 Q. State Exhibit 531. Is that the door to the  
16 electrical room?

17 A. Yes, sir, it is.

18 Q. And then 525, is that the view of the  
19 electrical room once the door is opened?

20 A. Yes, sir, that's correct.

21 Q. About how large is that room?

22 A. It's probably about a ten by ten.

23 Q. Okay. And what type of equipment is in there?

24 A. Electrical breakers, telephone wires,  
25 telephone cables, just basically what, you know, you have

1 like in your house.

2 Q. Could you just show the jury where the  
3 electrical room is located?

4 A. It's right here.

5 Q. Where did they place you in the electrical  
6 room?

7 A. They kind of set me against one wall and put  
8 me down right there.

9 Q. Okay. Now, were you able to see at all with  
10 this pillow case over your head?

11 A. Just a little bit, just barely. When I looked  
12 straight down, I could see just a little bit what was going  
13 on.

14 Q. Out from under the pillow case?

15 A. Yes, sir.

16 Q. After they laid you into the room, what did  
17 you think was going to happen to you?

18 A. I didn't know what was going to happen because  
19 I had lost all control of everything.

20 Q. You were completely helpless at that time?

21 A. I was.

22 Q. Did any of the inmates threaten you at that  
23 point in time?

24 A. Yes, they did. Garcia was threatening me  
25 really severely. He was telling me to be quiet and not to

1 try to warn anybody.

2 Q. After you were laying in there, could you hear  
3 what was happening to other employees?

4 A. Yes, I did. I heard other employees coming in  
5 and struggling with them.

6 Q. Struggling in that warehouse area?

7 A. Yes, sir.

8 Q. After they struggled with them, would they  
9 bring them into the electrical room?

10 A. Yes, they did.

11 Q. Once they -- could you tell who they were  
12 bringing into the electrical room?

13 A. I couldn't tell. As far as I could tell, when  
14 they came in, I thought they were dead.

15 Q. Why did you think they were dead?

16 A. They were not moving at all, just like I was.  
17 I wasn't moving at all. I was scared.

18 Q. Were they laying these bodies up next to you?

19 A. Yes.

20 Q. Did you hear any threats being made to persons  
21 in the room?

22 A. Yes, I did.

23 Q. What types of threats did you hear?

24 A. The same basic threats, you know, if you move  
25 or make noise, we'll kill you right here.

1 Q. Did you take those threats seriously?

2 A. Yes, we did.

3 Q. How long were you back there in the room  
4 hearing these employees being dragged in there?

5 A. It was quite a while. I really don't know. I  
6 lost track of time.

7 Q. Okay. Were these the craftsmen that were  
8 being brought in or did you know who they were at that time?

9 A. At that time I didn't know who it was.

10 Q. Okay. Now, as far as when you were being  
11 bound and gagged and brought back, who looked like they were  
12 in charge there?

13 A. Rivas was the one basically barking orders.

14 Q. Okay. Did all of them seem to be working as a  
15 team?

16 A. Yes, sir, they did.

17 Q. Did they all seem to have an -- assigned  
18 specific roles?

19 A. It appeared that each one of them had a  
20 specific job and Rivas was the one coordinating everything.

21 Q. What different things did you see them doing?

22 A. They were -- they were -- basically looked  
23 like they all had jobs to clean up and stuff like that is  
24 all I could tell. They were standing by buckets with mops  
25 and stuff like that.

1 Q. So after you got jumped and assaulted, some of  
2 them were actually cleaning up after you were under control?

3 A. Yeah, that's what I assumed.

4 Q. Okay. And you are not sure how long you were  
5 back there as workmen were being brought in; is that right?

6 A. I couldn't tell how long it was.

7 Q. Could you tell if some actual inmates were  
8 brought back there?

9 A. Yes, we did. I could tell because they were  
10 actually threatening them worse. You know, they were saying  
11 -- they were calling them heros and stuff like that.

12 Q. Okay. These were some of the inmates that  
13 actually worked in the maintenance department?

14 A. Yes, that's correct.

15 Q. Did it sound like some of them were being hit  
16 or beat?

17 A. Yes, they were.

18 Q. At one point in time were the lights turned  
19 out in there?

20 A. Yes, they were.

21 Q. And was this towards the end after the last  
22 employee was placed in the electrical room?

23 A. Yes, it was.

24 Q. After that light was turned out, what happened  
25 then?

1           A.       One of the craftsmen slid his hands out from  
2 the ties that he was tied up with and he started to untie  
3 himself.

4           Q.       Who was that?

5           A.       That was Terry Schmidt.

6           Q.       Mr. Schmidt? And what was his job there?

7           A.       He was a lock tech.

8           Q.       Okay. One of these persons that works on the  
9 locks throughout the prison?

10          A.       That's correct.

11          Q.       Once he got his hands free, what did he do?

12          A.       Well, we all started talking a little bit and  
13 we were trying to figure out if somebody had a knife in  
14 their hands where we could start cutting people loose. And  
15 one guy that was laying next to me said he thought he had a  
16 knife in his pocket. So I continued to proceed to search  
17 for it in his pocket because we were tied up.

18          Q.       Now, were the lights back on at that point in  
19 time?

20          A.       Not yet.

21          Q.       Okay. But there were -- none of these seven  
22 inmates were back there then?

23          A.       No, sir, they weren't.

24          Q.       The door was closed?

25          A.       The door was closed.



1 Q. What's the next thing that happened?

2 A. At some point in time they -- we started  
3 making a little bit too much noise, I guess, and they  
4 realized that we were trying to get loose. And Newbury  
5 tried to force himself inside the door.

6 Q. Prior to Newbury forcing himself in there,  
7 were some of you able to get loose?

8 A. Yes, we did.

9 Q. Did you have the pillow case taken off your  
10 head?

11 A. Yes, I did.

12 Q. So now you were free and could see everything?

13 A. Yes, sir.

14 Q. How about your hands, were they --

15 A. My hands were untied already at the time. My  
16 feet were still tied, but my hands were untied.

17 Q. So y'all were really in the process of getting  
18 undone and untied; is that right?

19 A. Yes, sir, that's correct.

20 Q. Was the light on at that point in time?

21 A. Yes, it was. I think we flipped it on at that  
22 time, at that point.

23 Q. How many people were back there in that room?

24 A. I think there were about 14 of us in there, I  
25 believe.

1 Q. Okay. Was it pretty crowded?

2 A. They were -- basically what they were doing,  
3 they were throwing people -- they had some people laying  
4 right across my legs like they were stacking like cord wood.

5 Q. So by the time y'all started getting free --  
6 well, was there everyone, except Vernon Janssen and Lou  
7 Gips?

8 A. That's correct.

9 Q. Those 14 people, then, were back there in the

10 --

11 A. That's correct.

12 Q. And their particular assignment is there on  
13 the right side; is that right?

14 A. That's correct.

15 Q. So you had a couple of officers and craftsmen  
16 and a couple of inmates?

17 A. That's correct.

18 Q. Let me show you State Exhibit 532. Does that  
19 show the flooring of the electrical room after you were able  
20 to get free?

21 A. Yes, sir, that's correct.

22 Q. We see various -- looks like tape and ties.  
23 Were these the types of ties that you were bound with?

24 A. Yes, sir.

25 Q. State Exhibit 535, that's the general middle

1 area of the electrical room?

2 A. Yes, sir.

3 Q. Are these large objects here, are these the  
4 gags that were put in your mouths?

5 A. Yes, sir, that's correct.

6 Q. We also see pillow cases, things like that?

7 A. Yes, sir.

8 Q. This yellow object, what is that?

9 A. There's probably some wire there that we were  
10 trying to tie the door up with that we tore from the conduit  
11 after we shut some breakers off and the ties, they were  
12 using those tie straps to bind some of our hands.

13 Q. Okay. Again, in the corner here, is this some  
14 blood, bloody cloth, as well as one of the gags?

15 A. Yes, sir.

16 Q. Let me show you 537. Is that -- does that  
17 show a water cooler that was back there?

18 A. Yes, sir.

19 Q. Had y'all placed that back there?

20 A. I don't know how that got there, but it was  
21 there whenever we were put in there.

22 Q. And this is some blood on a -- some type of  
23 pillow case?

24 A. Yes, sir.

25 Q. And then here's another one of the gags?

1 A. Yes, sir.

2 Q. Now that Mr. Schmidt had gotten free, your  
3 hands were undone at this point in time. Some of the other  
4 hostages, did they have their hands free?

5 A. Yes, they did.

6 Q. Was Mr. Schmidt located near that door?

7 A. Yes, he was.

8 Q. You said you must have made some noise because  
9 that's when Mr. Newbury tried to get in?

10 A. Yes, he did.

11 Q. From your vantage point, could you see who was  
12 on the other side of the door when it was forced open?

13 A. I saw Rodriguez and Rivas and Newbury.  
14 Newbury was trying to force his arm inside the door.

15 Q. Did he get inside the door?

16 A. He shoved up to his shoulder and he was waving  
17 a shank. He was trying to stab anybody by the door so they  
18 could turn the door loose.

19 Q. So he got his arm inside there?

20 A. Yes, sir, he did.

21 Q. What prevented him from getting any further?

22 A. Two offenders and Terry Schmidt were pushing  
23 against the door to hold it closed.

24 Q. So when you say the two offenders, is that the  
25 two hostage inmates?

1 A. Yes, sir, that's correct.

2 Q. They pushed the door closed?

3 A. Yes, sir, they did.

4 Q. Along with Mr. Schmidt?

5 A. Along with Mr. Schmidt. They were all three  
6 pushing on that door.

7 Q. Did Mr. Newbury get caught inside that door?

8 A. Yes, he did. His shoulder was wedged in there  
9 and they were holding his shoulder in there.

10 Q. But his arm was inside and he had a shank?

11 A. Yes, sir.

12 Q. What did the shank look like?

13 A. It was a long metal object and he was just  
14 waving it, you know, at anybody by the door, trying to see  
15 if he could stab somebody by the door.

16 Q. Was he able to stab anyone at that time?

17 A. No, he didn't.

18 Q. That was Mr. Newbury?

19 A. Yes, sir.

20 Q. You also saw Rodriguez and Rivas?

21 A. Standing by the door.

22 Q. Was that the first time that you had seen  
23 Rodriguez?

24 A. That's the first time.

25 Q. Okay. How was Mr. Newbury -- how did he get

1 himself out from that wedged-in spot?

2 A. They went and got some pry bars and pried the  
3 door open where he could get his shoulder out.

4 Q. Rivas and Rodriguez and the others?

5 A. I think it was Halprin and Harper, I believe.

6 Q. Okay. So they pried the door open and got him  
7 out?

8 A. Right.

9 Q. After he got out from the door, was the door  
10 shut again?

11 A. The door was shut again and they tried to weld  
12 it shut, I think.

13 Q. Were y'all pressing up against the door to  
14 prevent them from coming in?

15 A. Yes, we did. And we also tried to tie it shut  
16 with some of the material we had inside the room.

17 Q. What did you think was going to happen if they  
18 made it in that room?

19 A. We thought they were going to kill us all.

20 Q. Did you try to fashion some weapons in the  
21 room?

22 A. Yes, we did. We tore some conduit off the  
23 wall and there was some nails there on the floor and we put  
24 it in some pillow cases for something that we could hit  
25 with.

1 Q. Okay. You said that you heard some other  
2 activity going on outside the door?

3 A. Yes, we did. It sounded like they were  
4 welding on the door or trying to cut the door open or cut  
5 the doorknob off or whatever it was.

6 Q. Everyone was in a pretty excited --

7 A. Yes.

8 Q. -- condition at that point?

9 A. Yes, sir, they were. Everybody was pretty  
10 well agitated.

11 Q. State Exhibit 534, does that show the inside  
12 of the door?

13 A. Yes, sir, it is.

14 Q. Were you trying to tie the door shut?

15 A. Yes, sir, we were.

16 Q. Let me show you State Exhibit 533. What do we  
17 see there?

18 A. That's the fire alarm panel. We tried to set  
19 it off to bring attention to us where somebody would come  
20 and get us out of there.

21 Q. Okay. After a while could you hear any more  
22 activity outside the door?

23 A. No. It just quieted down like it all went  
24 away.

25 Q. How long were you in there before some other

1 prison officials arrived?

2 A. I estimate probably about 15, 20 minutes.

3 Q. Okay. Was one of the guards back there, was  
4 he suffering from some injuries?

5 A. Yes, he was. They handcuffed him with his own  
6 handcuffs and they didn't use a lock and they forced the  
7 handcuffs down where they were real tight on his hands.

8 Q. Was that Randy Albert?

9 A. Randy Albert, yes, that's correct.

10 Q. You didn't have a key to undo those cuffs?

11 A. No, we didn't.

12 Q. But the cuffs locked that hard on his hands.  
13 What did that do to his hands?

14 A. His hands were swelling and turning blue.

15 Q. Was anything being done to relieve them?

16 A. They were trying to put some cold water from  
17 that water can on his hands, trying to get the swelling to  
18 slow down a little bit.

19 Q. Was he in a lot of pain at that time?

20 A. He was in a lot of pain, yes, he was.

21 Q. How about your injuries, the ear and the blow  
22 to your head? How were you feeling?

23 A. I was real dizzy and somewhat confused and  
24 really upset, you know, that that happened.

25 Q. Did you see any other physical injuries on the



1 other hostages?

2 A. Everybody had, basically had cuts and bruises  
3 and different things, you know.

4 Q. How were you finally removed from that room?

5 A. The -- a team came in and they basically  
6 unlocked the door and escorted us out one by one and until  
7 we were identified. And then we were taken to a different  
8 area.

9 Q. Okay. Were your wounds treated then?

10 A. Yes, we were.

11 Q. What type of treatment did you have for your  
12 wounds?

13 A. They did some triage at the hospital there at  
14 the prison and they shipped us to Otto Kaiser.

15 Q. Now, you said your ear was cut pretty badly?

16 A. Yes, sir. It was basically severed in half.  
17 It was just hanging there.

18 Q. Did they sew it back on?

19 A. Yes, sir, they did.

20 Q. All right. Have you suffered some damage or  
21 some illness from these injuries?

22 A. Yes, I have.

23 Q. What type of injuries are those?

24 A. Basically postconcussion syndrome and some  
25 numbness in my hands and legs after a while and dizziness,

1 constant dizziness and headaches.

2 Q. Okay. Is that from the blow you received on  
3 your head?

4 A. Yes, sir.

5 Q. Have you been under a doctor's care?

6 A. Yes, I am.

7 Q. Now, since that time you've quit your work at  
8 the prison; is that right?

9 A. That's correct.

10 Q. When did you do that?

11 A. I think it was a couple of months afterwards,  
12 I believe.

13 Q. Did you try to work in the private sector  
14 after that?

15 A. Yes, I did. I went to work as a tractor  
16 salesman. And I worked for a while and after a while my  
17 driving got to be really bad and erratic and I was getting  
18 dizzy all the time, so I had to quit.

19 Q. Would you actually have to pull off the side  
20 of the road?

21 A. Yes, I did.

22 Q. And this, again, is the dizziness problems?

23 A. Yes, sir.

24 Q. You still undergoing those problems?

25 A. Yes, sir, I am.

1 Q. Okay. Let me show you State Exhibit 545. Is  
2 that a photograph of your ear, the left ear, where it was  
3 damaged?

4 A. Yes, sir, it is.

5 Q. You said you saw some shanks that day. Let me  
6 show you a couple of photographs. No. 547, does that look  
7 to be one of the types of shanks that was used?

8 A. Yes, sir, that looks something like them.

9 Q. No. 548, what are those objects?

10 A. That looks just like some tire straps that we  
11 had. Metal banding, I think, is what it's called.

12 Q. No. 549.

13 A. That looks like a piece of rebar or some more  
14 of that tie stuff.

15 Q. And then 550?

16 A. It's a piece of wire sharpened to a point with  
17 like a rubber handle, electrical tape handle.

18 Q. Now, State Exhibit 523, what area of the  
19 maintenance department is that?

20 A. That's the -- that's looking -- the  
21 maintenance officer's window, supervisor's window, is to  
22 your left and that's looking basically out our window, my  
23 office window, out to the shop.

24 Q. And 524, is that the truck that is used for  
25 deliveries?

1 A. Yes, sir, that's correct.

2 Q. When had that been brought in?

3 A. That was brought in right before lunch. I was  
4 supposed to go to town and pick up some materials.

5 Q. Okay. And was that truck taken during the  
6 escape?

7 A. Yes, it was.

8 Q. Let me show you State Exhibit 529. Is that  
9 the entrance to the maintenance department?

10 A. Yes, sir, it is.

11 Q. That green vehicle there, what is that?

12 A. We call it a Gator. It's what we travel on  
13 inside the unit.

14 Q. Okay. If you were going to go make some  
15 repairs and need to drive a vehicle, that's what you would  
16 drive in?

17 A. Yes, sir, that's correct.

18 Q. Up until the 13th of December, had you had any  
19 major problems of violence with any of these inmates?

20 A. No, I hadn't.

21 Q. Were any of your personal items taken?

22 A. Yes. They took basically everything, all my  
23 keys, my wallet, all my credit cards that were in there, and  
24 all that stuff was taken from me.

25 Q. Let me show you State Exhibit 985. Do you

1 recognize this wallet?

2 A. Yes, I do.

3 Q. Is that your wallet?

4 A. Yes, it is.

5 Q. Is this your drivers license inside?

6 A. Yes, sir, it is.

7 Q. Along with credit cards?

8 A. Yes, that's correct.

9 MR. SHOOK: Your Honor, at this time we  
10 offer State Exhibit 985.

11 MS. BUSBEE: No objection, Your Honor.

12 THE COURT: No. 985 shall be admitted.

13 MR. SHOOK: I believe it was previously  
14 admitted for record purposes from the objects found at the  
15 RV. Your Honor, we'll pass the witness.

16 CROSS-EXAMINATION

17 BY MS. BUSBEE:

18 Q. I have just a few questions. Tell me if I'm  
19 pronouncing your name wrong, because I've read it, but this  
20 is the first time I've heard it. Is it Moczygemba?

21 A. Moczygemba.

22 Q. I just have a few questions. It sounds to me  
23 like you saw everybody except Mr. Murphy when this escape  
24 occurred?

25 A. That's correct.

1 Q. Okay. Now, they have filed some felony  
2 charges in Karnes County alleging that you were kidnapped  
3 and Mr. Murphy is indicted for that offense as well, isn't  
4 he? Did you testify in front of the Grand Jury?

5 A. I didn't.

6 Q. Now, just to clear up a couple of things.  
7 Inmates are required to have jobs, unless they are in this  
8 unit that's called ad seg; isn't that correct?

9 A. That's correct.

10 Q. Could you explain that to the jury, what that  
11 is?

12 A. Ad seg is called administrative segregation.  
13 When you break a certain amount of rules and regulations in  
14 the prison, if you can't follow the rules, you end up there.  
15 And there is certain line classes. As you go in from A pod,  
16 to B pod, to C pod, as you progress your way up to F pod,  
17 which are the worst of the worst.

18 Q. Okay. So except for those people in ad seg,  
19 everyone else is required to work?

20 A. That's correct.

21 Q. All right. Now, I don't remember you saying  
22 this to the jury, but didn't Rivas put on your clothes?

23 A. Yes, he did.

24 Q. And he walked off with your clothes and your  
25 billfold and everything else?

1           A.       I think so.

2                   MS. BUSBEE: That's all I have, Your  
3 Honor.

4                   MR. SHOOK: We have no further questions.  
5 May this witness be excused?

6                   MS. BUSBEE: I have no objection.

7                   THE COURT: He may.

8                           [End of Volume]  
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1 STATE OF TEXAS \*

2 COUNTY OF DALLAS \*

3 I, NANCY BREWER, Official Court Reporter for the 283rd  
4 Judicial District Court, do hereby certify that the above  
5 and foregoing constitutes a true and correct transcription  
6 of all portions of evidence and other proceedings requested  
7 in writing by counsel for the parties to be included in this  
8 volume of the Reporter's Record, in the above-styled and  
9 numbered cause, all of which occurred in open court or in  
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2008

13  
14  
15 Nancy Brewer  
16 NANCY BREWER, CSR, NO. 5759  
17 Expiration Date: 12-31-04  
18 Official Reporter, 283rd JDC  
19 Frank Crowley Crts. Bldg. LB33  
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REPORTER'S RECORD

74851

VOLUME 46 OF 61 VOLUMES

TRIAL COURT CAUSE NO. F01-00328-T

STATE OF TEXAS \* IN THE DISTRICT COURT  
VS. \* DALLAS COUNTY, TEXAS  
PATRICK HENRY MURPHY, JR. \* 283RD DISTRICT COURT

\*\*\*\*\*

JURY TRIAL

\*\*\*\*\*

**FILED IN**  
COURT OF CRIMINAL APPEALS

MAR 9 - 2004

Troy C. Bennett, Jr., Clerk

On the 17th day of November, 2003, part two, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Vickers L. Cunningham, Sr., Judge Presiding, held in Dallas, Dallas County, Texas.

Proceedings reported by machine shorthand.

**ORIGINAL**

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P R O C E E D I N G S

MR. WIRSKYE: State will call Mark Burgess.

MARK BURGESS,  
having been duly sworn, was examined and testified as follows:

DIRECT EXAMINATION

BY MR. WIRSKYE:

Q. Sir, can you tell us your full name?

A. Mark Burgess.

Q. And how old a man are you?

A. Forty-five.

Q. And where do you currently live?

A. I live in Karnes County, Texas.

Q. You currently employed?

A. No, sir, I'm not.

Q. Back in December of 2000, were you employed?

A. Yes, sir, I was.

Q. And where were you employed then?

A. At the John B. Connally Unit, Texas Department of Corrections.

Q. What was your job at the Connally Unit?

A. I was maintenance supervisor, carpenter, painter, lock tech.

Q. As a part of your job, did you supervise

1 inmates?

2 A. Yes, sir.

3 Q. Looking at the exhibit behind you with the  
4 seven photographs, did you have contact with each of those  
5 seven individuals?

6 A. Yes, sir, I did.

7 Q. Were you directly responsible for supervising  
8 any of those individuals?

9 A. Yes, sir, I was directly responsible for  
10 Patrick Murphy.

11 Q. Looking around the courtroom, do you see  
12 Mr. Murphy in the court today?

13 A. Yes. Offender Murphy is at the end of the  
14 table right there.

15 Q. Can you tell us what he's wearing?

16 A. Blue shirt, gold tie, yellow gold tie.

17 MR. WIRSKYE: Let the record reflect this  
18 witness has identified the defendant.

19 Q. (By Mr. Wirsbye) Prior to December of 2000,  
20 how long had you worked in the Connally Unit?

21 A. A couple of years, approximately.

22 Q. Just to give the jury an idea, what was kind  
23 of a normal day like for you?

24 A. I had various jobs from shopwork, repairing  
25 furniture, building boxes, you know, storage boxes, things

1 like that, to building maintenance, repairing broken  
2 windows, walls, cracks in walls, concrete, just anything  
3 with carpentry work and then painting sheetrock, fixing  
4 doors, general repair in the carpentry.

5 Q. During the time you worked at the Connally  
6 Unit, did Patrick Murphy work for you?

7 A. Yes, sir, he did.

8 Q. And he would do the same types of things at  
9 your direction?

10 A. Yes, sir.

11 Q. How did y'all get along?

12 A. Fair.

13 Q. Did you ever have any major problems or  
14 anything like that?

15 A. No, sir, not -- not anything to speak of with  
16 Murphy, no, sir.

17 Q. Did you trust Mr. Murphy?

18 A. No, sir, I didn't.

19 Q. Why not?

20 A. He was -- when I first got there, it was told  
21 to me to watch Murphy in case he --

22 MS. BUSBEE: I'm going to object to  
23 hearsay.

24 THE COURT: Sustained.

25 Q. (By Mr. Wirskye) Mr. Burgess, we can't go



1 into what other people told you.

2 A. Yes, sir. I knew that a lot of contraband  
3 flowed through my shop and it was always that Mr. Murphy  
4 knew what was going on or had something to do with it  
5 directly.

6 Q. By contraband, would you include shanks or  
7 homemade knives?

8 A. Various things from radio boxes to -- that  
9 could have been knives or food, a lot of different things.

10 Q. Nevertheless, you never personally caught him  
11 with any of these items?

12 A. No, sir.

13 Q. Directing your attention to December 13th of  
14 2000, do you remember that day?

15 A. Sir?

16 Q. December 13 of 2000, do you remember that day?

17 A. Yes, sir, I do.

18 Q. What time did you get to work that day?

19 A. Regular time, 7:30 or 7:00.

20 Q. What did you do when you got to work?

21 A. It was a cold day that day. I wasn't going to  
22 bring any inmates out to work, just offender Murphy because  
23 he had some shop items to get done and I was going to catch  
24 up on paperwork.

25 Q. And how long did that take you?

1           A.       It was going to take me most of the day to get  
2 everything in order.

3           Q.       At some point did you go to lunch that day?

4           A.       Sir?

5           Q.       At some point did you go to lunch that day?

6           A.       Yes, sir.

7           Q.       Up until that time until you went to lunch,  
8 what had you and Mr. Murphy been doing?

9           A.       Mr. Murphy was working on a -- offender Murphy  
10 was working on a desk, I believe it was, and a couple of  
11 other little small jobs like that. And I had been doing  
12 paperwork. I escorted some free world contractors onto the  
13 unit. Just various things, things I had to do and then  
14 projects that Mr. Moczygemba had asked me to get done for  
15 him, you know, help him out.

16          Q.       When you went to lunch, what happened to Mr.  
17 Murphy?

18          A.       He stayed with the work crew that was going to  
19 work on the floor. Usually he was turned in for lunch, but  
20 that day he stayed back to help disassemble shelves because  
21 they were going to seal the floor in the warehouse.

22          Q.       And that was something that inmates knew about  
23 beforehand?

24          A.       Yes, sir.

25          Q.       How long did you stay at lunch?

1           A.       One hour -- well, we have a one-hour  
2 lunchtime, I stayed gone about 30 minutes.

3           Q.       What happened when you got back from lunch?

4           A.       I walked in the door and I was -- I noticed  
5 some inmates there. There was offender Halprin, offender  
6 Rivas, and offender Murphy walked in through the shop door.

7           Q.       Okay. And what happened when you saw them?

8           A.       Well, Halprin and Rivas, nothing. I had  
9 forgotten Murphy was going to stay back. And I said, "What  
10 are you doing?" And he said, "I stayed back to help." And  
11 I was okay. And that's when offender Rivas told me that  
12 Moczygemba was in the back. Mr. Moczygemba was in the back  
13 and wanted to see me.

14          Q.       Did that arouse your suspicion in any way?

15          A.       No, sir, not really.

16          Q.       Once Rivas told you that, what happened next?

17          A.       I walked into the shop area or into the  
18 warehouse area. And that's when I was struck in the back of  
19 the head -- well, then offender Halprin tried to get my  
20 attention to something on the floor, a box that had an  
21 electric motor in it. And he said, "Here, check this motor  
22 out." I'm a carpenter and I don't have anything to do with  
23 motors and I kind of blew it off. And I looked around and  
24 noticed the lights were out and that's when I realized  
25 something was wrong and that's when I was struck in the back

1 of the head.

2 Q. What happened once you were struck?

3 A. I was unconscious and I woke up and I was on  
4 top of offender Rivas.

5 Q. Did you have any idea who had struck you?

6 A. No, sir.

7 Q. Which inmates were around when you were  
8 struck?

9 A. For sure that I know, it was offender Rivas,  
10 offender Newbury, and offender Halprin.

11 Q. Where had Newbury come from?

12 A. He was in the shop -- I mean, in the warehouse  
13 already. He was not in the office area when I walked in, so  
14 he must have been in hiding, waiting.

15 Q. Do you know what you were struck with?

16 A. No, sir.

17 Q. Did you lose consciousness?

18 A. Yes, sir.

19 Q. How long were you out?

20 A. I have no idea.

21 Q. What happened when you came to?

22 A. I was -- I believe I was struggling with Rivas  
23 and I was thinking, you know, this isn't normal. I usually  
24 don't -- you know, why am I on top of Rivas like this? And  
25 that's when I felt points in my back and Rivas, you know,

1 told me to stop. He said, "Do you know what that is?" And  
2 immediately I realized that those were knives, shanks. And  
3 he goes, "Do you know what that is?" And I said, "Yes, I  
4 do." And he goes, "Okay. We got you." And I said, "Yes,  
5 you do."

6 Q. And at that point did you stop resisting?

7 A. Yes, sir.

8 Q. What happened next?

9 A. That's when Rivas told me, he says, "We're  
10 going home and you can go home, too, or not. It's up to  
11 you." And I said, "Okay."

12 Q. Did you think they were serious at this time?

13 A. Yes, yes, definitely serious. And that's when  
14 Rivas gave the order -- they turned me over. Offender  
15 Newbury stuck a knife right here (witness pointing) and had  
16 a knee over the top of me like this and that's when Halprin  
17 says, "Okay, take his clothes." And they started striping  
18 me. They took me down to my underwear.

19 Q. And once they got your clothes off, what  
20 happened?

21 A. That's when they started binding me. They set  
22 me up, jerked my arms behind my back forcibly. They duct  
23 taped from right below my shoulders to my elbows and on my  
24 wrists they put these zipties that we used in electrical  
25 work.

1 Q. Did you get injured during this?

2 A. Yes, sir, I did. It caused nerve -- pinching  
3 of the nerve in the joints in both arms. It caused carpal  
4 tunnel syndrome in my wrist. I've had three surgeries. And  
5 being struck on the back of the head has given me vertigo,  
6 fluid on my inner ear.

7 Q. When all this is going on, you are out in the  
8 warehouse; is that right?

9 A. Yes, sir.

10 Q. What inmates are around?

11 A. The ones -- those that I saw, Rivas, Newbury,  
12 and Halprin.

13 Q. Was Patrick Murphy anywhere there?

14 A. There was movement going around, but I never  
15 saw any other faces at that time.

16 Q. Once they got your hands tied behind your  
17 back, what happened?

18 A. They had me blindfolded with duct tape around  
19 my head. They put a gag in my mouth. And then Halprin made  
20 a statement that, he says, "You always thought I liked you,  
21 but I hate your fucking ass. I would just as soon kill you  
22 right now." And they said, okay, get him back to the  
23 warehouse -- or get him back to the room.

24 Q. Did you believe Halprin when he told you that?

25 A. Yes, sir.

1 Q. Thought he was serious?

2 A. Most definitely, yes.

3 Q. What happened next?

4 A. They picked me up and they carried me back to  
5 the electrical room and they threw me in and --

6 Q. Could you see at this point?

7 A. Not at this point -- well, I didn't want to  
8 see. I followed my training. When you are -- hostage  
9 training tells you to don't look directly at anybody, keep  
10 your head down, don't talk, follow orders, you know, don't  
11 cause any agitation amongst the captors.

12 Q. So once you get back to the electrical room,  
13 what happens?

14 A. Then I could start to see. I could see out of  
15 one eye, right here. And that's when offender Garcia, he  
16 was watching the inmates or the captives in the electrical  
17 room. And I'm bound, my legs are bound. Just like a  
18 newborn baby, I can't move.

19 There are four other bodies in the room.  
20 They were all laying down and I thought they were dead.  
21 There was blood on the floor, no movement. And I thought,  
22 well, this is where I die. And when they threw me down,  
23 Garcia puts a knife in my ear, real pointed shank. I could  
24 feel it biting in right here. And he tells me that, "That's  
25 one pound of pressure." And he said, "That's one pound of

1 pressure. Two more pounds and it's in your brain and you  
2 are dead." He says, "If anything goes wrong, we'll both get  
3 the needle." He says, "You'll get yours right now and I'll  
4 get mine in five years." And he said, "The year 2050  
5 doesn't come soon enough." And I took that to mean that was  
6 his parole date or release date.

7 Q. Did you believe him?

8 A. Yes, sir, I did.

9 Q. Were you scared?

10 A. Yes, sir, I was.

11 Q. Did you resist in any way?

12 A. No, sir, I did not.

13 Q. Once Garcia told you that, what happened next?

14 A. They laid me up against the wall. And I was  
15 on the floor, kind of in a fetal position. And then they --  
16 everybody else went forward back to the spot to where they  
17 took me down and Garcia stayed with us as a watchout for the  
18 captives.

19 Q. Were other hostages brought back to the  
20 electrical room?

21 A. Yes, sir. One by one they would bring by ones  
22 or twos they would bring people in and throw them on the  
23 floor and Garcia would go through the same, one pound of  
24 pressure, two more pounds and it's in your brain and you're  
25 dead.



1 And he did that over and over. And  
2 finally the room was full and Garcia made the statement, "We  
3 don't have any more room." It was people just stacked up  
4 like cord wood. So they had to reposition us and so we  
5 could all fit.

6 Q. Once they repositioned you, what happened?

7 A. I was sitting with my back against Officer  
8 Marroquin. And I could see then. I could see the door.  
9 The door was about right here, you know, this angle. And I  
10 could see people through this eye. And then they finally  
11 got everyone and they made the statement, "Okay, that's it."

12 And then Halprin -- and Marroquin  
13 complaining about his hands, you know, and, "I can't feel my  
14 hands," he says. I mean, all of us our hands were swollen  
15 and numb and --

16 Q. Once he makes that comment, what happened?

17 A. Sir?

18 Q. Once he makes that comment, Officer Marroquin

19 --

20 A. Halprin said something to the effect, "You  
21 know, when I was on the chain bus coming here, they kept me  
22 in handcuffs the whole time and my hands hurt, too, so fuck  
23 you." And walked out and just, you know, had no compassion  
24 whatsoever.

25 Q. At some point did that electrical room become

1 full of hostages?

2 A. Yes, sir. It was 13 of us in a small room.

3 Q. At some point did the escapees quit coming to  
4 the door and things go quiet?

5 A. Yes, sir. In fact, that's when Garcia left  
6 and they all went out and they turned out the light and shut  
7 the door.

8 Q. Then what happened?

9 A. As soon as the door was shut and we knew that  
10 we were alone, somebody said, "I've got a pocketknife,"  
11 because a couple of people still had their pants on. They  
12 didn't need 13 pairs of pants. They just took what they  
13 needed. And so I remember Patrick Moczygemba sat up. His  
14 hands were tied in front of him and he got to the  
15 pocketknife and he cut -- was cutting a couple of people  
16 loose. And he got to me and cut me loose.

17 And people were really, you know, frantic  
18 at this time. And they were telling him, cut me loose, get  
19 me out of this, and the inmates heard us. I know it was  
20 Newbury kind of pushed the door open just a crack and he saw  
21 that people were up, you know, I was -- by then I wasn't cut  
22 loose completely then. In fact, they were working on me.

23 Q. At that point how many people were cut loose?

24 A. Just one, one or two were. I know Terry  
25 Schmidt, the lock tech, was cut loose completely. And he

1 was closest to the door. And when Newbury stuck his head in  
2 and says, "They're getting loose," well, Schmidt stood up  
3 and his legs were still tied, but his hands were free and he  
4 closed the door, pushed the door closed and that's when the  
5 inmates tried to get back in.

6 Q. And how did they try to get back in?

7 A. They had pry bars, crow bars, hammers, they  
8 were trying to beat the door down. Finally, Newbury got  
9 himself halfway in the door and there were two inmates that  
10 were captives with us that had their backs against the  
11 electrical box, the transformer box. And it was enough  
12 space for them to just straighten out their legs and they  
13 wedged the door closed with their legs.

14 And so Newbury was caught. And he had a  
15 large shank in his hand and he's (demonstrating) slashing,  
16 he's trying to cut anything that he can get a hold of. And  
17 he's cutting. And finally he goes, "I'm stuck." And they  
18 had him pinned in pretty good. But he's still trying to  
19 cut. He's trying to cut Terry Schmidt. He's trying to stab  
20 these inmates in the legs.

21 Q. Was he ever able to --

22 A. No.

23 Q. -- stab anyone?

24 A. And I saw Halprin. He was outside with the  
25 long pry bar and he's trying to pry the top of the door

1 open. And then I could hear somebody hitting it with a  
2 hammer. And I saw the hammer swing. And that's when all of  
3 a sudden Halprin just finally forced himself out and the  
4 door closed again. And Schmidt told them, he says, "Just  
5 get out of here." He said, "We can't leave and you can't  
6 get in." You know, "So do what you are going to do and just  
7 go."

8 Q. Was there any response when Schmidt told them  
9 that?

10 A. No.

11 Q. Had they gotten back in the room, what would  
12 have happened?

13 A. People would have died.

14 Q. Why do you say that?

15 A. They were -- they were coming in ready to  
16 kill.

17 Q. At some point did you and the other hostages  
18 make an attempt to arm yourselves?

19 A. Yes, sir. As soon as the door closed and we  
20 all started to get loose, people started tearing down the  
21 electrical conduit. I found a bag of nails behind the  
22 transformer and they had put pillow cases over our head  
23 before they left. And we had all taken the pillow cases off  
24 and they took the nails and put a handful of nails and made  
25 a knot and so that was a weapon. And people had pieces of

1 tubing wire, I mean, metal tubing for a weapon. And then  
2 Allen Camber started trying to make the fire alarm go off.

3 Q. While this is going on, do you hear anything  
4 outside the door?

5 A. In the carpentry -- well, outside the door it  
6 was just -- you could hear those guys and I could hear the  
7 saws in the carpentry shop, the table saws, and things like  
8 that.

9 Q. When you heard the saw in the carpentry shop,  
10 what did that tell you?

11 A. I was wondering what the heck was Murphy  
12 doing, because he was the carpenter and he's got to be  
13 building something. They were cutting a lot of wood.

14 Q. So you assumed it was Murphy that was using  
15 the saw?

16 A. I assumed that, yes.

17 Q. And that was the part of the shop where he  
18 worked with you?

19 A. Right.

20 Q. How long were y'all in there total before you  
21 were rescued?

22 A. Approximately three hours.

23 Q. And how did it come about that they were able  
24 to rescue you?

25 A. After the inmates left and the -- Mr. Gips, I

1 think, got loose from the tower and he called the Warden's  
2 Office and then they sent somebody, a lieutenant back to the  
3 maintenance shop. And he was outside the door and we were  
4 locked -- we were locked inside. They had dismantled the  
5 lock on the door and disabled it. We couldn't open it at  
6 that time.

7 Q. Once you got out, did they give you any  
8 medical treatment?

9 A. Yes. They sent us to the unit infirmary, sort  
10 of a triage, to find out the worse cases, you know, people  
11 with lacerations and cuts, everything, and they sent those  
12 on to the hospital in an ambulance. And then they would  
13 ship us out as needed and in worse case scenario, I was  
14 about the middle, because I had no visible signs of injury.

15 Q. Describe your injuries for us.

16 A. When they hit me in the back of the head, it  
17 caused fluid in the ear. I lose my balance. I can't work.  
18 I get nausea. I have to take medication every day for the  
19 rest of my life now. Then the -- when they jacked my -- or  
20 when they pulled my arms behind my back, it forced the  
21 nerves in my elbow and pinched them, caused nerve damage.  
22 And they had to surgically take the nerve out and set it to  
23 the side.

24 My carpal tunnel, my hands go numb now.  
25 If I lay my hands down like this for any length of time, my

1 arms and hands go numb. Like I said, it's just -- I  
2 received a permanent disability out of this.

3 Q. Before this happened, you were, I guess, by  
4 profession a carpenter?

5 A. Yes, sir.

6 Q. Have you ever worked as a carpenter since that  
7 day?

8 A. No, sir.

9 Q. Will you ever be able to work as a carpenter?

10 A. No, sir.

11 Q. Did you lose property as well?

12 A. I lost all my clothes, my jacket, my wallet,  
13 my keys, they had the keys to my house, they had my address,  
14 everything. The only thing I had after it was over was a  
15 pair of underwear and a pair of socks.

16 MR. WIRSKYE: Thank you, sir. I'll pass  
17 the witness, Judge.

18 CROSS-EXAMINATION

19 BY MS. BUSBEE:

20 Q. Mr. Burgess, when was the last time you saw  
21 Mr. Murphy before you were conked in the head?

22 A. When he walked into the maintenance shop or  
23 maintenance office from the shop area and which was about  
24 three or four minutes before I was hit.

25 Q. Was that the conversation about, what are you

1 doing here, and I'm helping to clean up?

2 A. Yes.

3 Q. And he had a broom?

4 A. Well, he had a small whisk broom, long  
5 handled, what we use for a whisk broom.

6 Q. Now, Mr. Rivas, did you get the impression  
7 that he was directing this escape?

8 A. By all means, yes.

9 Q. Okay. What things did he do that gave you  
10 that impression?

11 A. He gave the orders.

12 Q. Okay. Mr. Halprin and Mr. Newbury and Mr. --  
13 sounds like Mr. Garcia, also took a real active part in  
14 manhandling people and threatening then?

15 A. Yes, ma'am.

16 Q. Did I skip somebody? Because I remember you  
17 talking about some of the others, but perhaps these were the  
18 ones that were the most brutal that you observed?

19 A. Yes, ma'am, well, as I said, those are the  
20 ones that I saw. There were other people I could hear  
21 walking, movement, but I couldn't see them and I couldn't  
22 tell you who they were.

23 Q. Okay. Had you trusted Rivas prior to this  
24 time?

25 A. I trusted him as much as I did any inmate.



1 You don't trust an inmate completely.

2 Q. That turned out to be wise.

3 A. Pardon?

4 Q. That turned out to be a wise policy.

5 A. Yes. But maybe a little more than I should  
6 have.

7 Q. Okay.

8 MS. BUSBEE: I'll pass the witness.  
9 Thank you.

10 MR. WIRSKYE: Nothing further, Your  
11 Honor.

12 THE COURT: Thank you, Mr. Burgess.

13 MR. WIRSKYE: May this witness be finally  
14 excused, Your Honor?

15 MS. BUSBEE: No objection.

16 THE COURT: He may.

17 MR. SHOOK: Call Martin Gilley.

18 MARTIN GILLEY,  
19 having been duly sworn, was examined and testified as  
20 follows:

21 DIRECT EXAMINATION

22 BY MR. SHOOK:

23 Q. Would you tell us your name, please.

24 A. Martin Gilley.

25 Q. And how are you employed, sir? How are you

1 employed?

2 A. I work for Texas State University in San  
3 Marcos.

4 Q. Let me turn your attention back to December  
5 2000 and where were you employed at that time?

6 A. Texas Department of Criminal Justice, Connally  
7 Unit.

8 Q. How long had you worked with them?

9 A. Since 1994.

10 Q. And what were your duties with them?

11 A. I was a plumbing supervisor in the maintenance  
12 department.

13 Q. And you worked there in the maintenance  
14 department in the Connally Unit?

15 A. That's correct.

16 Q. On a day-to-day basis, what were your duties?

17 A. Take -- I had a crew, usually two, maybe three  
18 guys, that go over the unit and take care of plumbing  
19 problems, you know, just repairs.

20 Q. Okay. Did you know an inmate by the name of  
21 Patrick Murphy?

22 A. I did.

23 Q. Do you see Mr. Murphy in the courtroom today?

24 A. I do.

25 Q. Is he the man seated here at the end of the

1 table with the brown hair and glasses?

2 A. That's correct.

3 MR. SHOOK: Your Honor, if the record  
4 could reflect that the witness has identified the defendant.

5 Q. (By Mr. Shook) And where did Mr. Murphy work?

6 A. He worked in the carpenter shop.

7 Q. Did you see him on a daily basis?

8 A. I did.

9 Q. All right. I want to turn your attention back  
10 to December 13 of 2000 and ask if you had come to work on  
11 that day?

12 A. Yes.

13 Q. What -- about what time did you break for  
14 lunch?

15 A. I don't remember if it was 11:30 or -- I think  
16 we broke for lunch at 11:30 at that time.

17 Q. Was that the regular time?

18 A. Yes, sir.

19 Q. And do you recall where you ate lunch that  
20 day?

21 A. I ate in the ODR and went to the parking lot.

22 Q. Let me turn your attention back to around  
23 12:35. Would that be about the time that you arrived back  
24 at the maintenance department?

25 A. Yes, sir.

1 Q. Where did you go when you arrived back at the  
2 maintenance department?

3 A. I went into the shop area.

4 Q. Was anyone in the shop with you?

5 A. There was a couple of inmates in the shop,  
6 yes.

7 Q. Had you come back from lunch with any of the  
8 other supervisors?

9 A. I came back with Mark Garza and Ronny Hahn.

10 Q. Okay. And what did Mr. Hahn do there at the  
11 maintenance department?

12 A. He was a lock tech.

13 Q. Okay. What about Mr. Garza?

14 A. He was -- he was the welding supervisor.

15 Q. Once y'all walked in together, did you  
16 separate at that time?

17 A. We did.

18 Q. Where did they go?

19 A. They went toward the warehouse area and I went  
20 into the shop area.

21 Q. Okay. The shop area, what types of things go  
22 on in there?

23 A. It's where all our carts were sitting out  
24 there and we had a few tables, the work benches, and stuff  
25 in there. The carpentry shop was in that area.

1 Q. Were you the only supervisor out there at that  
2 time?

3 A. Yes.

4 Q. And what were you doing there in the shop  
5 area?

6 A. I was just sitting at one of the tables, doing  
7 some paperwork, getting ready for the afternoon.

8 Q. Did inmate Garcia come and speak to you at  
9 that time?

10 A. Yes, he did.

11 Q. What did he want from you?

12 A. He asked me if I wanted something to eat.  
13 They were having a spread or something back in the office.

14 Q. What did you tell him?

15 A. I told him ,said, no, I had paperwork to do  
16 and I didn't need anything.

17 Q. After that, did another inmate come and say  
18 anything to you?

19 A. Yes.

20 Q. Who was that?

21 A. That was Patrick Murphy.

22 Q. What did he say to you?

23 A. He told me that Pat Moczygemba wanted to see  
24 me in the warehouse.

25 Q. Had he come in from the maintenance office

1 area --

2 A. He was the one that came out of the office  
3 area.

4 Q. Okay. And then he came into the shop area?

5 A. That's correct.

6 Q. And that's when he told you Pat Moczygemba  
7 wanted to see you?

8 A. Right.

9 Q. After he told you that, what did you do?

10 A. I was frustrated with the paperwork I was  
11 doing and I just threw it on the table and got up and walked  
12 into the area and that's when I was jumped from behind.

13 Q. When you went to the warehouse itself -- after  
14 you went in the warehouse itself, who did you see jump you  
15 from behind?

16 A. It was Garcia, Newbury, Halprin, and one other  
17 -- Rodriguez, I believe.

18 Q. Did they knock you to the ground?

19 A. They drug me around the corner and into the  
20 ground, yes.

21 Q. And as you struggled with them, did any of  
22 them produce some weapons?

23 A. Yes.

24 Q. What type of weapons were those?

25 A. Homemade knives, the regular, what we call a

1 Connally shank. It was just a round piece of steel,  
2 sharpened off to a sharp point.

3 Q. What did they do with those shanks?

4 A. I had some lacerations to both sides of the  
5 head.

6 Q. Put them up to each side of your head?

7 A. Right.

8 Q. Were threats made to you at that time?

9 A. Yes.

10 Q. What type of threats were made?

11 A. I was told, if I cooperated, I could go home  
12 or I could die right there. It didn't matter to them. But  
13 they were going home and I could go home, too, if I wanted  
14 to.

15 Q. Did you take their threats seriously?

16 A. Absolutely.

17 Q. At that point in time did you quit resisting?

18 A. Yes.

19 Q. Then what happened?

20 A. I was bound and gagged and drug into the  
21 electrical room where I saw the rest of the supervisors that  
22 had come in with me and before me were in the same shape I  
23 was in.

24 Q. Mr. Garza already in there?

25 A. Yes.

1 Q. Along with Mr. Hahn?

2 A. Yes.

3 Q. Mr. Moczygemba back there?

4 A. Yes, sir.

5 Q. Mr. Burgess?

6 A. Yes.

7 Q. Could you tell if they were hurt in any way?

8 A. I could tell they were hurt some. I didn't  
9 know if anybody was still alive until I felt one of the  
10 other guys breathing and then, you know, then I knew they  
11 weren't dead yet.

12 Q. After you were placed down in that room, did  
13 you hear other employees being drug back there?

14 A. Yes, sir.

15 Q. Could you hear them being taken down as you  
16 were?

17 A. Yes, sir.

18 Q. Once they were in the room, were more threats  
19 made to you?

20 A. Yes, sir.

21 Q. What types of threats were made?

22 A. I had a blindfold over my head, but I could  
23 see out of my right eye. One of the inmates had one of the  
24 shanks and he would stick it in the ear of one of the  
25 hostages and made the statement two or three -- I heard it



1 two or three times, they did it two or three times, "That's  
2 just one pound of pressure. Two or three more pounds of  
3 pressure and I can ram this thing through your brain."

4 Q. Okay. At some point in time after the room  
5 was filled up, did the inmates leave?

6 A. Yes.

7 Q. After that did Mr. Schmidt, was he able to get  
8 free?

9 A. Yes, sir.

10 Q. Were you untied at that point in time?

11 A. Yes, sir.

12 Q. Okay.

13 A. Right after that.

14 Q. At some point in time did the inmates then try  
15 to get back into the electrical room?

16 A. When we were in the process of freeing each  
17 other, well, that's when they were trying to get back in,  
18 yeah.

19 Q. Who did you see trying to come back in there?

20 A. Um, Newbury.

21 Q. Okay. Did he get wedged in the door at some  
22 point?

23 A. He had his arm caught in the door at one  
24 point, yes, sir.

25 Q. And what was everyone inside of the electrical

1 room doing?

2 A. We were just trying to bar the door and keep  
3 him out, you know, trying to get his arm back out of the  
4 door, get him pushed out and bar the door where they  
5 couldn't get back in.

6 Q. What were you afraid was going to happen, if  
7 they got back in?

8 A. We knew if they got back in, it was going to  
9 be them or us.

10 Q. What types of injuries did you receive from  
11 this?

12 A. I was one of the lucky ones. I just had  
13 superficial lacerations on one side of my head and I had a  
14 couple of stitches behind my ear on the left side.

15 Q. Did it appear some of the others had received  
16 more serious injuries?

17 A. Yes.

18 MR. SHOOK: We'll pass the witness.

19 MS. BUSBEE: No questions, Your Honor.

20 MR. SHOOK: May this witness be excused?

21 THE COURT: He may.

22 MR. SHOOK: Call Vernon Janssen.

23 VERNON JANSSEN,

24 having been duly sworn, was examined and testified as  
25 follows:

DIRECT EXAMINATION

BY MR. SHOOK:

Q. Would you tell us your name, please.

A. Vernon Janssen.

Q. And how are you employed, sir?

A. I was employed by the State of Texas.

Q. Okay. Back in December of 2000?

A. Yes.

Q. Did you work at the Connally Unit?

A. Yes.

Q. And what were your duties there?

A. I was an officer.

Q. And in what particular area did you work?

A. All over.

Q. Okay. Did you work at all parts of the prison, just depending on what was going on that day?

A. Yes, sir.

Q. Let me turn your attention back to December 13th, 2000, and where were you assigned that morning?

A. Feeding chow.

Q. Okay. After the lunchtime, were you given another assignment?

A. Yes, sir.

Q. And what was that assignment?

A. Back gate officer.

1 Q. And when you say the back gate, is that the  
2 gate where the deliveries are brought into the prison?

3 A. Yes.

4 Q. And they have an officer that works down at  
5 the gate itself?

6 A. Yes.

7 Q. Let me show you some photographs that have  
8 been marked as State Exhibits 551 through 567. You have  
9 seen these photographs outside the presence of the jury on a  
10 previous occasion; is that right?

11 A. Yes, sir.

12 Q. Are these photographs of the back gate area  
13 and some interior shots of the building that you were in on  
14 that day?

15 A. Yes.

16 MR. SHOOK: Your Honor, at this time we  
17 offer State Exhibits 551 through 567.

18 MS. BUSBEE: We've seen them, Your Honor,  
19 and we have no objection.

20 THE COURT: Nos. 551 through 567 shall be  
21 admitted.

22 Q. (By Mr. Shook) First, let me show you State  
23 Exhibit 551. Is that a photograph of the back gate itself?

24 A. Yes.

25 Q. And that tower there, what is that called?

1 A. The picket.

2 Q. Okay. Is there a guard on duty up there at  
3 all times?

4 A. Yes.

5 Q. And the weapons that the guards have at the  
6 prison, is that where they are kept?

7 A. They are stored up there, yes.

8 Q. Where are they stored in the picket?

9 A. In the very top at the -- where the officer  
10 stays.

11 Q. Okay. What types of weapons are kept up  
12 there?

13 A. Handguns, .357 handguns, AR-15 rifles, and  
14 shotguns.

15 Q. Okay, 12-gauge shotguns?

16 A. Twelve gauge.

17 Q. And ammunition for those guns also kept up  
18 there?

19 A. Yes.

20 Q. There seems to be, is this a rope or a pulley  
21 that's on the outside of the picket?

22 A. Yes.

23 Q. And what's that used for?

24 A. To lower weapons down to officers that take  
25 inmates out of the prison.

1 Q. Okay. So if inmates are working outside the  
2 fence, the officers then receive their weapons?

3 A. They receive them there, too, yes.

4 Q. Do guards actually have guns inside the  
5 prison?

6 A. No guns are allowed in.

7 Q. Let me show you State Exhibit 552 -- let me  
8 first show you, that building there, is that the building  
9 you were assigned to?

10 A. Yes, sir.

11 Q. And the back gate, are there two actually  
12 different gates?

13 A. Yes. There's a walkway gate and a  
14 drive-through gate.

15 Q. The drive-through gate is right here?

16 A. Yes.

17 Q. And the walk-through gate is over here?

18 A. Right, yes, sir.

19 Q. What's the process for getting in and out of  
20 the prison? Who operates those gates?

21 A. The officer in the tower.

22 Q. Okay. And on that particular day was a man by  
23 the name of Lou Gips operating that particular gate from the  
24 tower?

25 A. Yes.

1 Q. And then your assignment was for this area  
2 down here?

3 A. Yes.

4 Q. Let me show you the next photo. Does this  
5 kind of show your viewpoint from the tower down to the  
6 prison?

7 A. Yes.

8 Q. This building here, is that the maintenance  
9 department?

10 A. Yes.

11 Q. Okay. If you were going to drive to the  
12 maintenance department, you would go this way and towards  
13 this gate?

14 A. Yes.

15 Q. And 553, is that the gate you would have to  
16 come through to get to the building that you were located  
17 in?

18 A. Yes.

19 Q. No. 554, is that the outside of the building?

20 A. That's the -- where the vehicle sallyport is  
21 to the building that I was in.

22 Q. What are these instruments here?

23 A. Mirrors to look under vehicles.

24 Q. State Exhibit 555, is this a side view of the  
25 building?

1 A. Yes.

2 Q. State Exhibit 557, does this show the building  
3 that you were in on that day?

4 A. Yes.

5 Q. And were you seated at that desk?

6 A. Yes.

7 Q. Let me turn your attention to about 1:20 that  
8 day. Did you receive a phone call while you were down in  
9 that office?

10 A. Yes, I did.

11 Q. And how did they identify themselves?

12 A. Said they were Moczygemba.

13 Q. Okay. And is that one of the supervisors at  
14 the maintenance department?

15 A. The head supervisor of the maintenance  
16 department.

17 Q. Do you remember the name of the guard that you  
18 relieved that usually worked the back gate?

19 A. Officer Puentes.

20 Q. Did they ask for Officer Puentes then?

21 A. Yes.

22 Q. Okay. Did you tell them he had gone home?

23 A. I said he was off.

24 Q. All right. What information did they give you  
25 at that time?



1 A. They said they were going to come to the back  
2 gate and install cameras and monitors.

3 Q. Did that arouse your suspicion at all at that  
4 time?

5 A. No.

6 Q. Why was that?

7 A. Because a month earlier they installed some in  
8 another picket, another tower.

9 Q. All right. About 1:40 or so after that call,  
10 did, in fact, some inmates and what you believed at the time  
11 a maintenance boss come to that back gate?

12 A. Yes.

13 Q. And how did they come to the back gate?

14 A. Two inmates came through the walkway into the  
15 office and one civilian came in the other -- the  
16 drive-through door.

17 Q. Okay. At that time did you believe that  
18 civilian was one of the maintenance supervisors?

19 A. Yes.

20 Q. Was there another person you believed to be a  
21 maintenance supervisor also there?

22 A. Standing outside.

23 Q. Okay. Which direction did he go?

24 A. He was standing at the door, just outside.

25 Q. All right. So three came inside the building

1 you were in; is that right?

2 A. Yes.

3 Q. Two inmates and what you believed to be a  
4 supervisor?

5 A. Yes.

6 Q. And do you see one of those two inmates or  
7 persons dressed as an inmate here in the courtroom today?

8 A. Yes.

9 Q. And was his name Patrick Murphy?

10 A. Yes, sir.

11 Q. Where is Mr. Murphy seated?

12 A. Seated right there.

13 Q. Seated there with the coat and tie on and  
14 glasses?

15 A. Yes.

16 MR. SHOOK: Your Honor, if the record  
17 could reflect the witness has identified the defendant.

18 Q. (By Mr. Shook) Mr. Murphy was dressed as he  
19 always had been at that time as an inmate; is that right?

20 A. Right.

21 Q. Who was the other inmate with him?

22 A. Newbury.

23 Q. So Murphy and Newbury were dressed as inmates?

24 A. Yes.

25 Q. Was that unusual to have two inmates with a

1 maintenance supervisor?

2 A. No, they all -- all the maintenance  
3 supervisors usually carried two inmates.

4 Q. And they work with them on a daily basis?

5 A. Yes.

6 Q. The maintenance supervisor, did he look at you  
7 directly at that time?

8 A. No, he never looked at me directly.

9 Q. What did he do once he got in the building?

10 A. He sat a box down on the desk and turned  
11 around and started looking at the wall and said, "We need to  
12 put this conduit here." And his back was away from me.

13 Q. Okay. And once he started saying that, did  
14 the phone ring?

15 A. The phone rang, yes.

16 Q. Did he answer the phone?

17 A. Yes.

18 Q. And who was it at that time?

19 A. They asked for the area, is there a supervisor  
20 there, maintenance supervisor there, and I said yes and they  
21 wanted to talk to him.

22 Q. Did you believe it was someone from the  
23 maintenance department calling?

24 A. Yes.

25 Q. And did you hand the phone over to him at that

1 time?

2 A. Yes.

3 Q. What did he do then?

4 A. He said, I thought I gave you those numbers  
5 before and then he reached and got a box that was on the  
6 table and he read off some kind of serial numbers.

7 Q. And then what did he do?

8 A. He said, "They want to talk to you."

9 Q. Did he hand the phone back to you at that  
10 time?

11 A. Yes.

12 Q. And then what happened?

13 A. I said, hello, and that's when he pulled me  
14 over the chair.

15 Q. Okay. So he had gotten behind you at that  
16 point in time?

17 A. Yeah. When I answered the phone, he walked  
18 behind me.

19 Q. And did he put his arm, kind of get you in a  
20 headlock?

21 A. Yeah.

22 Q. And flipped you over the chair?

23 A. Yes.

24 Q. When he flipped you to the ground, what did  
25 Mr. Murphy and Mr. Newbury do?

1 A. They also assisted him in holding me down.

2 Q. They all three grabbed a hold of you?

3 A. Yes.

4 Q. And what did they do to you then?

5 A. They grabbed my handcuffs and handcuffed me.

6 Q. So you got handcuffed in front or behind?

7 A. Behind.

8 Q. And what did they do with your legs?

9 A. They taped my ankles.

10 Q. Was this all three of them doing this?

11 A. Yes.

12 Q. Did you recognize now who the person was  
13 disguised as a maintenance supervisor?

14 A. Yeah, I believe it was Harper.

15 Q. Larry Harper?

16 A. (Witness nods head.)

17 Q. So Harper and Mr. Newbury and Mr. Murphy  
18 subdued you and then they bound you?

19 A. Yes.

20 Q. After you were bound, what did they do with  
21 you?

22 A. Slid me into the restroom.

23 Q. Okay. Let me show you State Exhibit 558. Is  
24 this the desk you were sitting at?

25 A. Yes.

1 Q. Those some of the boxes there that they  
2 brought in?

3 A. Yes.

4 Q. And the tape there, is that some of the tape  
5 they used to tie you up with?

6 A. Yes.

7 Q. State Exhibit 559, are these some of the tools  
8 Mr. Murphy and Mr. Newbury brought in with them?

9 A. Yes.

10 Q. State Exhibit 561, does that show the restroom  
11 where you were taken to?

12 A. No. It's a restroom in the very corner back  
13 there.

14 Q. Let me show you, then, 562. Is that the  
15 restroom?

16 A. Yes.

17 Q. And that tape, is that the type of tape that  
18 your legs were bound with?

19 A. Yes.

20 Q. After you were placed in the bathroom, what  
21 happened then?

22 A. I kicked the door open.

23 Q. Okay.

24 A. They didn't shut it all the way.

25 Q. After you kicked the door open, what happened?

1 A. Newbury came back and pushed my feet in and  
2 slammed the door.

3 Q. Did he say anything to you at that time?

4 A. He said, "Don't worry about it, Janssen."

5 Q. How long did you stay back there in that room?

6 A. Probably five to ten minutes.

7 Q. Okay. And how were you freed?

8 A. Officers came running back there.

9 Q. Other guards?

10 A. Yes.

11 Q. Before you were freed and after they left, did  
12 you hear any vehicles come to the gate?

13 A. I heard a vehicle horn honking.

14 Q. And once you heard it honking, did you hear  
15 the gates open up?

16 A. I heard a gate, yes.

17 Q. Did you hear anything else after that?

18 A. Just doors slamming. That's about it.

19 Q. And then after that --

20 A. Pickup door slamming.

21 Q. Pickup door slamming? And after that you were  
22 freed several minutes later?

23 A. Yeah.

24 MR. SHOOK: That's all the questions we  
25 have.

1 MS. BUSBEE: No questions, Your Honor.

2 THE COURT: Thank you, Mr. Janssen.

3 MR. SHOOK: May this witness be excused?

4 MS. BUSBEE: No objection.

5 THE COURT: He may.

6 MR. WIRSKYE: May we approach, Your  
7 Honor?

8 THE COURT: You may.

9 (Bench conference)

10 THE COURT: We'll take our afternoon  
11 break at this time and stand in recess until -- take 20  
12 minutes and push almost to 3:00.

13 [Jury out]

14 THE COURT: Let the record reflect the  
15 jury has been retired and we'll have a hearing outside the  
16 presence of the jury. Mr. Wirskye, call your next witness.

17 RITA SAMANIEGO

18 having been duly sworn, was examined and testified as  
19 follows:

20 DIRECT EXAMINATION

21 BY MR. WIRSKYE:

22 Q. Can you tell us your full name and spell your  
23 last name for the Court Reporter.

24 A. Rita Samaniego, S-A-M-A-N-I-E-G-O.

25 Q. Directing your attention back to December 13th



1 of 2000, were you employed at the Connally Unit?

2 A. Yes, sir.

3 Q. What did you do at the Connally Unit?

4 A. I worked with the gang office in the Connally  
5 Unit, gang officer.

6 Q. And you were there the day of the escape?

7 A. Yes, sir.

8 Q. Once you became aware of the escape, did you  
9 receive an assignment to go search some dormitory rooms?

10 A. Yes, sir.

11 Q. Whose rooms did you search?

12 A. I searched Murphy, Newbury, a couple of the  
13 other guys that -- Halprin, Harper.

14 Q. How long from the time you became aware of the  
15 escape until you searched the dormitory rooms was it?

16 A. I would say 20 to 30 minutes.

17 Q. So fairly quickly?

18 A. Uh-huh, yes, sir.

19 Q. Did you find anything in Mr. Murphy's room?

20 A. Yes, sir.

21 Q. Tell the Court what you found.

22 A. A letter was recovered from his cubicle, a  
23 handwritten letter.

24 MR. WIRSKYE: May I approach, Your Honor?

25 THE COURT: You may.

1 Q. (By Mr. Wirskye) Let me show you a  
2 handwritten letter marked for identification as State 1010.  
3 Do you recognize that?

4 A. Yes, sir.

5 Q. What is that?

6 A. It's a letter that was found in his cubicle at  
7 the dormitory.

8 Q. How do you know that's the letter that you  
9 found?

10 A. When I found the letter, I wrote the housing  
11 area on the top and I wrote the name of the offender that  
12 lived in that housing cubicle.

13 Q. At the top of this letter we see Murphy?

14 A. Right.

15 Q. Is that your handwriting?

16 A. Yes, it is.

17 Q. And we also see No. 43?

18 A. Yes, sir.

19 Q. Is that your handwriting?

20 A. Yes, sir.

21 Q. What does the 43 signify?

22 A. Forty-three is the bunk, the cubicle, that he  
23 was living in.

24 MR. WIRSKYE: Your Honor, at this time we  
25 offer the letter, State's 1010 and for record purposes,

1 State 1011, the packaging of the letter.

2 MS. BUSBEE: May I take this witness on  
3 voir dire, Your Honor?

4 THE COURT: You may.

5 VOIR DIRE EXAMINATION

6 BY MR. BUSBEE:

7 Q. I was talking when you said your name. Would  
8 you mind telling me again, I'm sorry.

9 A. Rita.

10 Q. I can't call you Rita.

11 A. Samaniego is the last name.

12 Q. Samaniego?

13 A. Yes, ma'am.

14 Q. Okay. Did you know Mr. Murphy prior to  
15 searching his cubicle?

16 A. I have seen him before. I knew of him.

17 Q. And these cubicles, are they as depicted in  
18 State's Exhibit No. 1014 to look like little half-walls?

19 A. Yes, ma'am.

20 Q. And there's a bunk and a table in that area?

21 A. Right.

22 Q. How many people live in that dormitory?

23 A. There are approximately 105.

24 Q. All right. And during the day, more  
25 specifically during this day, were some of them in the dorm?

1 A. Yes, ma'am.

2 Q. About how many?

3 A. Oh, an estimated maybe 60 to 70.

4 Q. Okay. And did you recover anything else from  
5 his cubicle?

6 A. Not that I recall.

7 Q. Okay. Now, this State Exhibit No. 1010, that  
8 appears to have some red stain on it. Do you know what that  
9 is?

10 A. I was told they were the handwriting, the  
11 sampling, when they did the fingerprinting.

12 Q. Okay.

13 A. It wasn't like that.

14 MS. BUSBEE: May I approach the witness,  
15 Your Honor?

16 THE COURT: You may.

17 Q. (By Ms. Busbee) Ma'am, I'm going to show you  
18 State Exhibit 1010 again and ask you, I know that you wrote  
19 43 up here. Did you also write Murphy?

20 A. Yes, ma'am, that's the cell.

21 Q. And so this number that's written in blue ink

22 --

23 A. No.

24 Q. -- do you know where that came from?

25 A. No, ma'am.

1 Q. So would it be fair to say that No. 43,  
2 Murphy, this L number written in blue with some initials,  
3 and the State exhibit number were not on this piece of paper  
4 when you recovered it?

5 A. Right.

6 Q. Okay. Were you acquainted with Mr. Murphy's  
7 handwriting?

8 A. No, ma'am.

9 Q. Is there any one -- was there any way that his  
10 cubicle was secured during the day that day? It looks to me  
11 from State Exhibit 1014 that probably by design you have  
12 very little privacy and this is open to the rest of the  
13 dormitory; is that correct?

14 A. Yes, ma'am.

15 Q. Do you know whether or not any fingerprints  
16 were recovered from this document?

17 A. I'm not sure.

18 MS. BUSBEE: That concludes my  
19 questioning. I'm going to object to inclusion or admitting  
20 this into evidence as this witness cannot authenticate it as  
21 being written by the defendant and it was in an area where  
22 anyone could have put it at any time. And since it's not  
23 linked to the defendant, I'm objecting to it under 901.

24 THE COURT: It goes to weight. You can  
25 argue that to the jury all day long. Overruled. No. 1010

1 shall be admitted.

2 (Recess)

3 [Jury in]

4 THE COURT: Please be seated. Call your  
5 next witness. Let the record reflect this witness has been  
6 previously sworn.

7 RITA SAMANIEGO,  
8 having been duly sworn, was examined and testified as  
9 follows:

10 DIRECT EXAMINATION

11 BY MR. WIRSKYE:

12 Q. Ma'am, can you tell us your full name.

13 A. Rita Samaniego.

14 Q. Where do you live?

15 A. I live in Beeville, Texas.

16 Q. Where are you employed?

17 A. At the Connally Unit in Kenedy, Texas.

18 Q. And how long have you worked in the Connally  
19 Unit?

20 A. Eight years.

21 Q. Where are you currently assigned?

22 A. I'm currently assigned with the Gang Office,  
23 Security Threat Office.

24 Q. What do you do for the Gang Office?

25 A. Monitor gang offenders and their activities.

1 Q. And how long have you done that?

2 A. Approximately three, three and a half years.

3 Q. Was that your assignment back on the day of  
4 this escape, December 13th, 2000?

5 A. Yes, sir.

6 Q. As a part of just working in the Connally  
7 Unit, were you familiar with the inmates behind you, those  
8 seven individuals?

9 A. Yes, sir.

10 Q. Does that include Patrick Murphy?

11 A. Yes, sir.

12 Q. Do you see Patrick Murphy in the courtroom  
13 today?

14 A. Yes, sir.

15 Q. Could you point him out and tell us what he's  
16 wearing?

17 A. The blue shirt, black coat, and yellow tie.

18 MR. WIRSKYE: Your Honor, let the record  
19 reflect the witness has identified the defendant.

20 Q. (By Mr. Shook) Now, to your knowledge, at  
21 least, the Connally Unit, Mr. Murphy was not in any sort of  
22 gang or anything like that; is that correct?

23 A. That's correct.

24 Q. If he was, he wouldn't have had the job that  
25 he held at the prison unit; is that correct?

1 A. Correct.

2 Q. Taking you back to the day of the escape, you  
3 were working that day?

4 A. Yes, sir.

5 Q. How did you first become aware there was an  
6 escape?

7 A. We heard a call over the radio to respond to  
8 the back gate.

9 Q. And did you do that?

10 A. Yes, sir.

11 Q. What happened when you got to the back gate?

12 A. We realized that several offenders had escaped  
13 in one of the State vehicles through the back gate.

14 Q. Pretty quickly, were the names of these  
15 offenders, were y'all able to get the names?

16 A. Fairly quickly, yes, sir.

17 Q. Once you had the names, did you receive an  
18 assignment?

19 A. Yes.

20 Q. What was that?

21 A. To shake down their houses.

22 Q. When you say shake down their houses --

23 A. Means to go through their houses, look for any  
24 items they may have left behind.

25 Q. And their house would be their dormitory room



1 or their cell?

2 A. Their cubicle, yes. He was living in a  
3 dormitory setting, so that would be his cubicle.

4 MR. WIRSKYE: May I approach, Your Honor?

5 THE COURT: You may.

6 Q. (By Mr. Shook) Officer, let me show you a  
7 photograph that's been marked for identification as State  
8 Exhibit 1014. You and I have looked at this photo outside  
9 the presence of the jury?

10 A. Yes, sir.

11 Q. And what does the photograph show?

12 A. It's the cubicle in the dormitories.

13 Q. And what number is it?

14 A. 43.

15 Q. And the day of the escape, what number  
16 dormitory cell did Mr. Murphy reside in?

17 A. 43 cell.

18 Q. And, again, this photograph was not taken the  
19 day of the escape; is that right?

20 A. Right.

21 Q. But at some point afterwards?

22 A. Right.

23 MR. WIRSKYE: Your Honor, at this point  
24 we offer State 1014.

25 MS. BUSBEE: No objection.

1 THE COURT: State 1014 shall be admitted.

2 Q. (By Mr. Wirsky) If you could look up on the  
3 big screen, Officer, and just kind of show the members of  
4 the jury or tell them what they are looking at.

5 A. They are looking at a cubicle, standard  
6 cubicle, for a dormitory housing area. Consists of a bunk,  
7 which is the bed, a table, and a locker box.

8 Q. Where is the locker box?

9 A. It's underneath the bunk all the way to the  
10 back of the wall.

11 Q. Is it right there?

12 A. Yes.

13 Q. Are those boxes locked?

14 A. They can be, if they have a lock to put on it.

15 Q. And it's up to the inmate, right?

16 A. To purchase one, yes.

17 Q. So this is where you went to search right  
18 after the escape; is that right?

19 A. Correct.

20 Q. When you searched 43 where Mr. Murphy was, did  
21 you find anything?

22 A. I recovered a letter out of his cubicle, a  
23 handwritten.

24 Q. Officer, let me show you what has been marked  
25 for identification as State Exhibit 1010 and ask you if

1 that's the letter you recovered from Mr. Murphy's dormitory  
2 room?

3 A. Yes, sir.

4 Q. How are you able to tell that that is the  
5 letter?

6 A. When I searched their houses, I label what I  
7 recovered from that house and I marked this particular  
8 letter with his name and the cubicle that he was assigned  
9 to.

10 Q. And there's a No. 43 in your handwriting in  
11 the upper left?

12 A. Correct.

13 Q. And Murphy in your handwriting in the upper  
14 right?

15 A. Correct.

16 Q. There's also some writing with a blue pen and  
17 looks like some red stains? Is it your understanding that's  
18 from the crime lab?

19 A. Right.

20 Q. How soon would you say you recovered this  
21 letter after the escape?

22 A. Maybe 30 minutes or so, give or take.

23 MR. WIRSKYE: Your Honor, at this time we  
24 offer State Exhibit 1010.

25 MS. BUSBEE: The Court made a ruling on

1 this already, did you not?

2 THE COURT: I did. No. 1010 shall be  
3 admitted.

4 MR. WIRSKYE: Permission to publish to  
5 the members of the jury?

6 THE COURT: You may.

7 Q. (By Mr. Wirsky) Ladies and gentlemen, this  
8 is the letter projected up on the big screen. It reads as  
9 follows. "I refuse to abide by the dictations of a police  
10 state, which Texas has surely become. Today I fired the  
11 first shot of the new revolution" -- misspelled -- "long  
12 live freedom. Death to tyranny."

13 After you found the letter, you turned  
14 it over to internal affairs there at the prison system; is  
15 that right?

16 A. Yes, sir.

17 MR. WIRSKYE: I'll pass the witness, Your  
18 Honor.

19 CROSS-EXAMINATION

20 BY MS. BUSBEE:

21 Q. Ma'am, did you generate a report in connection  
22 with this incident?

23 A. I can't say I did right at the time, because  
24 of all the stuff that was going on. But I did at a later  
25 date.

1 Q. And you wrote this out at the request of the  
2 District Attorney's Office?

3 A. Yes, ma'am.

4 Q. And you wrote that this year; is that right?

5 A. Correct, uh-huh.

6 Q. In March of this year?

7 A. Yes, ma'am.

8 Q. Do you remember whose cubicle you searched  
9 first?

10 A. I don't recall. I just know that I shook down  
11 the ones that I was told to shake down that they had  
12 identified as the escapees.

13 Q And were they all in the same dormitory?

14 A. No, ma'am.

15 Q. But you at this late date don't remember how  
16 much time passed from the time of the escape and the time  
17 that you searched offender Murphy's cubicle?

18 A. No, I can't say exactly the time.

19 Q. Now, had you ever seen Mr. Murphy's  
20 handwriting?

21 A. No, ma'am, I don't believe.

22 Q. And in this dormitory, how many other inmates  
23 were in that dormitory that day, if you can give us an  
24 estimate?

25 A. An estimate between 60 and 70.

1 Q. And not very many of them were working or --

2 A. The remainder of the ones that weren't there  
3 were either at work or at school or vocation or something.

4 Q. So 60 or 70 there that day to the best of your  
5 recollection?

6 A. Yes, ma'am.

7 Q. And as it's shown in State Exhibit 1014, these  
8 are just kind of half-walls that form almost a box?

9 A. Yes, ma'am.

10 Q. And there's not much privacy?

11 A. No, ma'am.

12 Q. And I take it that during the day these people  
13 can mill around and go in each other's cubicles?

14 A. They can. They're not supposed to, but they  
15 can.

16 Q. You call that a lock box underneath the cot.  
17 Is it locked?

18 A. If they have funds to purchase a lock, they  
19 can purchase a lock and lock it.

20 Q. Was that locked that day or do you recall?

21 A. No, ma'am.

22 Q. Where did you say that you found State Exhibit  
23 1010?

24 A. In his cell in the box.

25 Q. In the box?

1 A. Yes, ma'am.

2 Q. What else did you find in there?

3 A. I don't recall finding anything else.

4 Q. Was it just this?

5 A. I believe so.

6 Q. Now, do you know whether or not any  
7 fingerprints were recovered?

8 A. I'm not sure.

9 Q. Do you know if any other evidence was  
10 recovered that would link Mr. Murphy to this letter?

11 A. I'm not sure.

12 MS. BUSBEE: I'll pass the witness.

13 REDIRECT EXAMINATION

14 BY MR. WIRSKYE:

15 Q. When you handled the letter, were you wearing  
16 gloves?

17 A. No, sir.

18 Q. When you turned it over to the people in  
19 internal affairs, were they wearing gloves?

20 A. No, sir.

21 Q. Everybody connected with it touched it with  
22 bare hands?

23 A. Right.

24 Q. And, again, you get there probably under an  
25 hour of the escape?

1           A.           Probably under an hour.

2                       MR. WIRSKYE: That's all I have, Judge.

3                       MS. BUSBEE: I have no further questions.

4                       THE COURT: Thank you, ma'am. You may  
5 stand down.

6                       MR. WIRSKYE: May she be finally excused,  
7 Your Honor?

8                       MS. BUSBEE: No objection.

9                       THE COURT: She may.

10                      MR. SHOOK: Call John Kemp.

11                               JOHN KEMP,

12 having been duly sworn, was examined and testified as  
13 follows:

14                               DIRECT EXAMINATION

15                      BY MR. SHOOK:

16                      Q.       Would you tell us your name, please.

17                      A.       My name is John Kemp.

18                      Q.       And where do you live, sir?

19                      A.       La Porte, Texas.

20                      Q.       And where is La Porte, Texas?

21                      A.       Just south of Houston.

22                      Q.       Okay. Do you have a family?

23                      A.       Yes, sir, I do.

24                      Q.       What does your family consist of?

25                      A.       Wife and three children, oldest a daughter, a



1 boy in the middle and my wife just had a baby girl before  
2 all this started.

3 Q. All right. And how are you employed?

4 A. I'm a manager for an automotive retail  
5 company, Auto Zone.

6 Q. How long have you worked for Auto Zone?

7 A. A total of about ten years now.

8 Q. Let me turn your attention back to December  
9 18th of 2000 and ask if you were working at an Auto Zone at  
10 that time?

11 A. Yes, sir, I was.

12 Q. Which store were you assigned to?

13 A. Store number is 1455. It's near the corner of  
14 Spencer Highway and Center Street in Pasadena, Texas.

15 Q. Pasadena, Texas, is a suburb of Houston?

16 A. Correct.

17 Q. What time did you come to work that day?

18 A. About 11:00 in the morning. I had a late  
19 shift that night. I was closing the store.

20 Q. Were you the manager of that particular store?

21 A. Yes, sir.

22 Q. What time were y'all closing?

23 A. I believe we closed at 11:00 that evening.

24 Q. Okay. Let me show you some exhibits which  
25 have been marked State Exhibits 607 through 611. Are these

1 photographs of that particular Auto Zone, both the outside  
2 and inside of the store?

3 A. Yes, sir, they were.

4 MR. SHOOK: We offer State Exhibits 607  
5 through 611.

6 MS. BUSBEE: I have no objection, Your  
7 Honor.

8 THE COURT: Nos. 607 through 611 shall be  
9 admitted.

10 Q. (By Mr. Shook) Is this the Auto Zone as it  
11 appeared from the outside?

12 A. Yes, sir.

13 Q. How many people did you have working with you  
14 that evening?

15 A. There was two other people, Robert and Jenny.

16 Q. Okay. And what were they doing there?

17 A. Um, we were all helping customers, me and  
18 Robert mainly. Jenny was the cashier.

19 Q. Okay. Anything unusual happen that night  
20 during your regular shift?

21 A. Not during the regular shift, no.

22 Q. Up near closing time, right at closing time,  
23 did you have about three or four customers in there?

24 A. Yeah, we were getting ready to close. It was  
25 late. I had already shut the lights out for the evening. I

1 was hoping -- there was a few customers I had checked to  
2 make sure there was just a limited number of customers in  
3 the store. I had Jenny lock the front door. And a customer  
4 had come up to the counter and we were discussing an  
5 overheating problem that he was having with his car.

6 One of my regulars had come in, too, and  
7 he had gotten involved in this conversation we had had about  
8 this overheating problem and he had offered his assistance  
9 and then he was on his way out. And Jenny let him out and  
10 then locked the door behind her.

11 Q. You had a few regular customers that come in  
12 on a weekly basis?

13 A. Right. This was one of the guys that he had  
14 heard us talking about the overheating problem and he  
15 offered his assistance.

16 Q. Okay. So you were already talking with this  
17 other customer when this regular guy, regular customer,  
18 entered into the conversation?

19 A. Correct, that's correct.

20 Q. And what did this customer that was asking you  
21 for assistance, what did he look like?

22 A. Short brown hair, just an everyday guy.

23 Q. Okay. You testified in the trial of George  
24 Rivas; is that correct?

25 A. Yes, sir, that's correct.

1 Q. When you came to testify at the trial of  
2 George Rivas, did you once again see the man that talked to  
3 you about his overheating problem?

4 A. Oh, yeah, yeah, there was just no doubt.

5 Q. And once you saw him in person, did you  
6 recognize him to be George Rivas?

7 A. Yes, sir, I did.

8 Q. How long did Mr. Rivas talk to you that day?

9 A. Oh, we were probably in a conversation for  
10 about ten minutes, just across the counter. We were  
11 discussing several different things that it could have been,  
12 what would cause the overheating problems. And he was  
13 giving me all different kinds of things that he had done, so  
14 it was like he knew automotive. I couldn't come up with  
15 anything and that's when this regular customer, he's a  
16 mechanic, he does work on the side in his garage. And he  
17 got involved. And he said, it could be this and it could be  
18 that. We were just throwing a bunch of stuff around.

19 Q. So the three of y'all were talking about  
20 trying to solve what you thought was Mr. Rivas' problem?

21 A. Right, right.

22 Q. Anything about that ten-minute conversation at  
23 the time arouse your suspicions about Mr. Rivas?

24 A. No.

25 Q. Anything about what he said or his demeanor

1 arouse you whether he was lying to you or planning to rob  
2 you within a few minutes?

3 A. No, I had no idea.

4 Q. Did he seem like a perfectly --

5 A. Just a regular guy.

6 Q. Okay. You said that your employee that worked  
7 under you locked the door; is that right?

8 A. Yeah, after -- after my regular customer had  
9 -- he just come in for some technical information. He had a  
10 book out and he was looking through it trying to get some  
11 specifications on something. And once he got the  
12 information and offered the assistance to, you know, help  
13 this guy out, he was like, look, I have got a shop. If you  
14 need anything, here's my card. He just went on his way and  
15 Jenny led him to the door and locked the door after he was  
16 out.

17 Basically, what we were trying to do is  
18 control the inflow of customers. I didn't want any more  
19 people coming into the store.

20 Q. So now after the door was locked, you had what  
21 you later found out to be Mr. Rivas still in there and a  
22 couple of other people?

23 A. Right. Once Jenny had locked the door and was  
24 walking back towards the counter, that's when Rivas informed  
25 me. He said, "Well, if you haven't figured it out yet, I'm

1 here to rob you," and he picked his shirt up and showed me a  
2 gun.

3 Q. Where was the gun located?

4 A. It was stuffed right in the front of his  
5 pants.

6 Q. When you saw that gun, what went through your  
7 mind?

8 A. I just -- it wasn't going to be good.

9 Q. Okay. You take his threats seriously?

10 A. Oh, yeah, oh, yeah.

11 Q. Once he showed you that gun, could you tell  
12 what type of gun it was?

13 A. It was just a dark -- I'm going to assume it  
14 was a revolver -- I think it was a revolver. I don't know.  
15 It was a gun. I could make out that it was a gun, so --

16 Q. Were you pretty scared at that point in time?

17 A. Pretty much, yeah.

18 Q. What did he do then?

19 A. Jenny had walked up to us and she said,  
20 "What's going on?" And I told her, I said, "Look, just  
21 listen to what he's got to say. Just do what he says and  
22 we'll be all right."

23 And I turned to look down towards the end  
24 of the counter and a guy had come out from the end and he  
25 was already holding a gun out on Robert. Robert had gone in

1 the back and had gotten a dust mop thing we use to clean the  
2 floor and he was already, you know, starting to prepare to  
3 get everything ready so we could get out of there. And he  
4 pulled a gun out on Robert.

5 And Robert's a pretty big guy and he's  
6 had some experience in security, so he was trying to make  
7 some moves, I guess to either get the gun or get a position  
8 on him. And I was just thinking, you know, Robert, you need  
9 to just settle down and relax. And finally he did. Finally  
10 he just settled down and listened to what the guy had to  
11 say.

12 Q. Okay. So there was another man with a gun at  
13 that point?

14 A. Right.

15 Q. What did that man look like?

16 A. He was taller than I was, blondish hair,  
17 skinny.

18 Q. Okay. So Mr. Rivas, was he still standing  
19 near you?

20 A. Yeah. He was standing directly across the  
21 counter from me. I let Jenny walk by me and he asked, he  
22 said, "You need to go to the back of the store." And so we  
23 started to move towards the back of the store. And Robert  
24 was in this confrontation with this other guy, well, they  
25 had already started to move back towards the back of the

1 store. And Rivas told me, he said, "Put your hands up."  
2 And I was just panicked. And so I did. I just threw my  
3 hands way up in the air and he told me to put them back down  
4 again.

5 Q. So you stuck your hands straight up?

6 A. Right. I was putting them way up in the air.  
7 And he said, "No, put them back down." And so I put them  
8 back down. And he said, "Put them where I can see them."  
9 So I did that.

10 And then I looked out and I saw him  
11 putting something in his ear. And the whole time he was  
12 waving this gun and saying, "Move towards the end of the  
13 counter." And so we were doing that. And we walked down to  
14 the end of the counter and then came out into this open area  
15 and walked down this aisle.

16 Q. Let me stop you there. He had his gun out  
17 from his belt at that point in time?

18 A. Right.

19 Q. Did he have the gun pointed at you?

20 A. Well, it was in the general direction.

21 Q. Then he put something in his ear?

22 A. Right. He put something in his ear. And I  
23 heard him say something to somebody. The key word was  
24 "maximizing". He said, "We're maximizing." And he said it  
25 twice.



1 Q. Okay. When you saw him talk, did it appear he  
2 was talking on a radio or something?

3 A. Right.

4 Q. And he said, "We're maximizing"?

5 A. He said, "We're maximizing. We're  
6 maximizing." And I distinctly remember that one word.

7 Q. And what went through your mind when you heard  
8 him saying that and saw that he was on the radio?

9 A. Yeah. That's when I knew that there was  
10 somebody outside.

11 Q. Okay.

12 A. Because we have a door in the back of the  
13 store and for a second I'm thinking, if I can get to that  
14 door, I can get outside. And then he's talking on a radio  
15 and I realize he's talking to somebody outside, so there's  
16 no sense in me going there, because I'm just going to be in  
17 the same situation I am in here.

18 Q. Okay. So then what happened?

19 A. So then he takes us -- we're walking down this  
20 aisle and this customer comes walking out of nowhere down  
21 the back by this oil rack. And he's walking up and he says,  
22 "What's going on?" And I looked at him and I said, "Just do  
23 what they say. Just listen to what they say and everybody  
24 will be all right."

25 Q. What did this customer look like?

1           A.       He was -- I don't know, a little heavy set  
2 Hispanic guy with chrome or gold frame glasses and he fell  
3 in and we all went behind the counter -- went behind the oil  
4 rack. And we came around the oil rack and Robert was  
5 already down on his knees and they were pulling his shirt  
6 off of him. And then Jenny went around him and the guy  
7 stayed behind Robert and I went around Jenny, the farthest  
8 away from where we had went through the oil rack at.

9           Q.       Then what happened?

10          A.       They had us lay down. They told us to empty  
11 out our pockets. They asked who was in charge and so I  
12 lifted my hand up. I was face down and I lifted my hand up  
13 and said, "I am."

14                   And so they had me get up and I turned  
15 around and they patted me down. And all my stuff was  
16 already out on the floor. And then who I found out was  
17 eventually Rivas, had put on Robert's shirt and a ballcap  
18 and he took me back up towards the front of the store.

19          Q.       Okay. Let me show you State Exhibit 609.  
20 Does this show the dust mop that the employee, Robert, was  
21 using?

22          A.       Right. That's at the end of the counter  
23 there. That's where -- because the guy had came out -- if  
24 you are looking at this picture, he had came out from the  
25 left, because Robert was on the aisle and he had pointed the

1 gun at Robert. And both of them went straight back down  
2 that aisle. You can go back there straight through to the  
3 oil rack.

4 Q. State Exhibit 611, is this the area in the  
5 back where they originally had taken you?

6 A. Yes. Robert would have been right here close  
7 and Jenny and me out towards the top of the screen there.

8 Q. After they identified you as the person in  
9 charge, did Mr. Rivas take you back to the front?

10 A. Right. We went back up to the front. He  
11 walked behind me and the whole time he was trying to, I  
12 guess, reassure me that everything would be all right. He  
13 said, "Look, this is my first time doing this. I know you  
14 are scared. I know you are nervous. Just relax and do what  
15 I say and everything will be all right." He said, "I'm  
16 scared, too." And I'm thinking, man, you have got a gun in  
17 your hand. What are you talking about?

18 Q. Did he have that gun out still?

19 A. Oh, yeah, it was out.

20 Q. Did he have it pointed at you?

21 A. Oh, yeah. Well, I mean, I didn't have eyes in  
22 the back of my head, but I could just imagine there was a  
23 gun pointed in my back. Anyway, we make this turn to go  
24 into the office and he asked me, do I have a bag and I said,  
25 no. And he said, "Where is it at?" And I said, "There's

1 one in front."

2 So he made me come out. And when I did,  
3 a car had pulled up. So he told me, he said, "Get back  
4 here." And he put me in the back. There's a little opening  
5 before you get to the office and he made me lay face down on  
6 the floor and he walked up to the door and waved these  
7 people off. And he came back and he made me get a bag,  
8 stood me up, and made me get a bag. And we went into the  
9 office and he knelt me down in front of the safe and he  
10 said, "Open it up and get the money out." And so that's  
11 what I did.

12 Q. Did you comply with that?

13 A. Oh, yes.

14 Q. Let me show you State's Exhibit 610, is that  
15 the photograph of the safe after it's been opened and  
16 emptied out?

17 A. Yes, sir. That is. Those drawers right there  
18 were stacked in the bottom. There's a computer just to the  
19 right of it. And I just went in and opened it up and  
20 started emptying the stuff out in the bag. And when I was  
21 done -- I was knelt down just -- this would be to the right  
22 of where those drawers were. They were sitting in between  
23 my legs. And I turned around to look up at him to show him  
24 that I was done emptying out the cash registers and there  
25 was a gun pointed at my head.

1 Q. How close was it to you?

2 A. It was very far. I was focused on the gun  
3 very easily.

4 Q. And it was pointed directly at you?

5 A. Directly at me.

6 Q. Okay. Then what happened?

7 A. I told him, "That's it." And he said, "Do you  
8 have any quarters?" And I said, "Yeah. There's a bunch of  
9 rolls here." And he said, "Put some of those in, too." And  
10 so I threw a couple of rolls of quarters in. And I looked  
11 up and I said, "That's it." And he said, "All right. Get  
12 up."

13 And so he stood me up and we walked out  
14 of the office back out towards the front. And there's three  
15 cash registers. Where that safe is right there, there's a  
16 wall and then directly in front of that wall is where the  
17 check-out counter is.

18 And so we went out there and we stopped  
19 at the first one and he had me open it up and empty out the  
20 cash into it. And then we went to the second one and that  
21 time when we removed the second one, he moved behind me  
22 towards the window. And he had me open it up and empty it  
23 out.

24 When I got to the third one, it was windy  
25 outside and there's a garbage can out there. And we had

1 just emptied them out. I had Robert go empty out the  
2 garbage can, so there wasn't anything in it but an empty  
3 bag. The wind had sucked the bag up out of the garbage can  
4 and it was floating in the air and he had seen it. And with  
5 his back to the window and the gun pointed at me, he asked  
6 me if there was somebody behind him and I looked out the  
7 window and there wasn't anyone there, so I told him no.

8 And I know that -- I mean, whoever was on  
9 the other end of that microphone could hear that same thing,  
10 too. I emptied outside the third one and we went back, took  
11 me back behind the oil rack.

12 Q. So he took all the cash from the safe and the  
13 three registers?

14 A. And the three registers.

15 Q. Once you got to the back, what was going on  
16 back there?

17 A. By the time I got to the back, Robert and  
18 Jenny were tied up face down with their hands behind their  
19 backs. They had been taped up. They laid me down. They  
20 asked us if any of us had driven a vehicle there and if we  
21 had it there. Jenny told them that she had and where her  
22 keys were at.

23 Q. The other man that you encountered, not the  
24 other man with the gun, but the one that was identifying  
25 himself as a customer, what was he doing?

1           A.       He was actually sitting by where Robert was.  
2       They were, -- once I got to the back, they laid me face down  
3       and the guy that had had the confrontation with Robert, he's  
4       the 'one -- he came back and he pulled my hands behind my  
5       back and tied me up. And they were getting ready to leave.  
6       And he was just kind of crying and whining.

7           Q.       You talking about the man?

8           A.       The guy, the customer.

9           Q.       The Hispanic man that said he was a customer?

10          A.       Right. They were telling us that they were  
11       going to take him as hostage. They wanted us to be still  
12       and be quiet for ten minutes after they had left or they  
13       would kill this guy. And he started crying. He was like,  
14       look, you can take my watch, you can take whatever, do  
15       whatever, but just don't take me hostage. And I was just  
16       glad they weren't taking Jenny, but I felt bad for the guy,  
17       too.

18          Q.       After awhile after you reflected upon it and  
19       this incident was over, did you change your mind about that  
20       customer?

21          A.       Oh, yeah. We figured out later that he was in  
22       on it. He was one of them and it was just all a ploy.

23          Q.       Okay. So after he said that and you were tied  
24       up, what did they do then?

25          A.       They had gathered up everything and I

1 remembered the customer had a basket full of merchandise and  
2 so did this guy that had gotten in the confrontation with  
3 Robert. So they laid us down and told us, look, it was ten  
4 minutes, you know, if we hear anything within ten minutes,  
5 we're going to kill this guy.

6 And they went walking out. And they  
7 walked right out -- they unlocked and walked right out the  
8 front door. And when they did that, whatever the  
9 merchandise they had had, we have these tags that make an  
10 alarm go off and it's just an internal-type of thing. And  
11 when they walked through, it did, and it went off.

12 And we waited and it wasn't long Jenny's  
13 car -- or Jenny's truck fired up. I heard it and they  
14 pulled back up to the front door and one of them came back  
15 inside and we're still laying face down. And he came back  
16 to the back and he said, "All right," he said, "We're giving  
17 you guys ten minutes. You know, we don't want to hear  
18 nothing."

19 And this guy went walking back out and I  
20 heard him drop something. And I heard him drop something.  
21 And I had a feeling it was that radio. I heard it hit the  
22 ground and I heard something break apart and he said  
23 something and then he picked it up and walked out. And it  
24 was quiet. And we just laid there for a minute or so.

25 Q. How did you get free?



1           A.       Robert, Robert got out. He was a pretty  
2 good-sized guy and there was no way duct tape was keeping  
3 him tied up.

4           Q.       After he got free, did he help free you?

5           A.       Yeah. He got Jenny and then got me and we got  
6 up and called the police.

7           Q.       Had they taken Jenny's car?

8           A.       Oh, yeah. They found it. It was about a  
9 block away in a Kroger's parking lot.

10          Q.       Did you determine how much cash,  
11 approximately, was taken from the safe and registers?

12          A.       I never asked or found out exactly how much,  
13 but it was well over \$6,000.

14          Q.       Over \$6,000?

15          A.       Probably, somewhere in that range, I'm sure.

16          Q.       Okay. Did they take some of your personal  
17 property with them?

18          A.       Yeah, when we emptied out our wallets, they  
19 took everything that we had emptied out. I emptied out my  
20 wallet and my keys onto the ground and they took all of it.

21          Q.       Okay. Let me show you some objects that have  
22 been entered for record purposes. Do you recognize these  
23 torn-up photographs?

24          A.       Yes. These are pictures of my wife and my  
25 daughter.

1 MR. SHOOK: Your Honor, at this time  
2 we'll offer 344 for all purposes.

3 MS. BUSBEE: No objection.

4 THE COURT: No. 344 shall be admitted.

5 Q. (By Mr. Wirskye) No. 344 found in the trash  
6 outside an RV. The torn photographs we see here is your  
7 wife and oldest daughter?

8 A. Correct.

9 Q. Had those photographs been in your wallet?

10 A. Yes, sir, they had.

11 Q. Let me show you what has been marked and  
12 entered for record purposes as 986, the ID there for Texas  
13 Board of Private Investigators. Do you recognize that name?

14 A. Robert Swihart. This was the employee that I  
15 had working for me.

16 Q. Okay. His name was Robert Swihart?

17 A. Correct.

18 Q. And let me show you some other identification  
19 in there, a driver's license and a concealed handgun  
20 license.

21 A. This is Robert.

22 Q. That's Robert Swihart's photo?

23 A. This is his photograph and these are his  
24 licenses, that's correct.

25 Q. This particular photograph that we see in the

1 private investigator is not --

2 A. That's not Robert.

3 Q. Okay.

4 MR. SHOOK: Your Honor, at this time we  
5 offer State Exhibit 986. I may have misidentified it as  
6 486.

7 MS. BUSBEE: No objection.

8 THE COURT: No. 986 shall be admitted.

9 Q. (By Mr. Shook) Let me show you what has been  
10 entered for record purposes as 345, a package recovered from  
11 the bedroom of the RV. Do you recognize this document?

12 A. That's my insurance card.

13 Q. That's your -- John and Elizabeth Kemp?

14 A. Correct.

15 MR. SHOOK: We'll offer State Exhibit  
16 345.

17 MS. BUSBEE: No objection.

18 THE COURT: No. 345 shall be admitted.

19 Q. (By Mr. Shook) And you said the employee that  
20 worked for you, let me show you State Exhibit 343-A,  
21 contents of that, and this purse. Is this Jeanne  
22 Hawkinson's driver's license, as well as credit cards?

23 A. Yes, sir. Employment discount card there,  
24 also, for Auto Zone.

25 MR. SHOOK: We'll offer the contents of

1 State Exhibit 343-A.

2 MS. BUSBEE: No objection.

3 THE COURT: No. 343-A shall be admitted.

4 Q. (By Mr. Shook) Was her vehicle taken from the  
5 location?

6 A. Yes, sir, it was. They found it about a block  
7 away. Put it in the parking lot.

8 MR. SHOOK: We'll pass the witness, Your  
9 Honor.

10 CROSS-EXAMINATION

11 BY MS. BUSBEE:

12 Q. I have some questions. Who were the other two  
13 people? Did you ever identify them?

14 A. The other two people?

15 Q. The other two people that were in your store  
16 that weren't employees like the man that had the gun that  
17 threatened Robert? Did you identify him?

18 A. Um, did I identify him?

19 Q. Uh-huh.

20 A. I believe it was Newbury.

21 Q. Okay. What about the pretend customer, was  
22 that Joseph Garcia?

23 A. I believe so.

24 MS. BUSBEE: I'll pass the witness, Your  
25 Honor.

1 MR. SHOOK: Just one more question,  
2 Judge.

3 REDIRECT EXAMINATION

4 BY MR. SHOOK:

5 Q. The type of radio, did you see the type of  
6 radio Mr. Rivas was using?

7 A. Yeah. It was a little two-way radio like  
8 this.

9 Q. Let me show you State Exhibit 612. Is that  
10 the two-way radio?

11 A. It was similar to that. And the only reason  
12 that I recognized it, during Thanksgiving we had gone on a  
13 vacation. We had gone up to a campsite and this was like  
14 the latest new toy gadget device. They were these little  
15 miniature type of two-way walkie-talkies. And an aunt and  
16 uncle had brought a set, actually two different sets of  
17 aunts and uncles had brought them up there and my daughter  
18 was just totally fascinated with this little thing.

19 So when I saw it, I remembered thinking  
20 that, oh, he's got one of those little -- that's how I knew  
21 it was a two-way radio.

22 Q. And that's the one he was saying "maximizing"?

23 A. Right. When he put the earpiece on and he  
24 made it click, I heard it.

25 MR. SHOOK: We'll offer State Exhibit

1 612.

2 MS. BUSBEE: I have no objection.

3 THE COURT: No. 612 shall be admitted.

4 Q. (By Mr. Shook) That's a photograph that you  
5 have just identified; is that correct?

6 A. Correct.

7 MR. SHOOK: We'll pass the witness.

8 RECROSS EXAMINATION

9 BY MS. BUSBEE:

10 Q. You said that it was dropped on the floor.  
11 Was it broken?

12 A. Oh, yeah, there was pieces of it.

13 Q. Was that the one that was dropped on the  
14 floor?

15 A. No.

16 Q. Do you know where that one came from?

17 A. Where what one came from?

18 Q. Is that --

19 A. I have no idea where that radio -- I'm going  
20 to assume Radio Shack is what it says on it.

21 Q. But that's not the one that was dropped on the  
22 floor?

23 A. No, it's not. It has a similarity. The one  
24 that was dropped in the store was transparent blue hard  
25 plastic, just like -- well, just that.

1 Q. Okay. But just transparent. Was it broken?

2 A. Oh, yeah, there was pieces of it. I had heard  
3 it and everything that was happening. It wasn't until after  
4 the police were in the store that I remembered I heard  
5 something hit the ground. He dropped something. And so I  
6 just got down on all hands, on my hands and knees. I mean,  
7 the cops are in the store, I've got district managers,  
8 managers from other stores in the store and I'm on my hands  
9 and knees looking around. And they're like, what are you  
10 doing? And I said, he dropped something. I heard something  
11 hit the ground. And I found pieces of it. There were  
12 pieces of it laying on the floor. I found the batteries.

13 Q. I'm guessing the police took that with them?

14 A. I'm sure they did. I don't know.

15 MS. BUSBEE: Thank you, sir. I have no  
16 more questions, Your Honor.

17 MR. SHOOK: That's all we have, Judge.

18 THE COURT: Thank you, Mr. Kemp.

19 MR. SHOOK: May this witness be excused?

20 MS. BUSBEE: No objection, Your Honor.

21 THE COURT: He may.

22 MR. WIRSKYE: Call Detective Jaramillo.

23 LARRY JARAMILLO,

24 having been duly sworn, was examined and testified as  
25 follows:

DIRECT EXAMINATION

BY MR. WIRSKYE:

Q. Sir, can you tell us your full name and please spell your last name for the Court Reporter.

A. Yes, sir. My name is Larry M. Jaramillo. the spelling is J-A-R-A-M-I-L-L-O.

Q. How are you employed?

A. I'm employed with the City of Pasadena.

Q. As a police officer, obviously?

A. Yes.

Q. What is your specific assignment or duty for the City of Pasadena?

A. I'm a Crime Scene Investigator assigned to the Identification and Crime Scene Unit.

Q. What type of training or experience do you have that allows you to be a crime scene investigator?

A. I have several hundred hours of crime scene investigation that I have taken through various different agencies, DPS, Department of Public Safety, Houston, and also at the Pasadena Police Department.

Q. Let me direct your attention back to Tuesday, December 19 of 2000. Did you get a call to go out and process a gray pickup truck?

A. Yes, I did.

Q. Was it your understanding that that truck was



1 related to a robbery that had happened at an Auto Zone?

2 A. Yes, sir.

3 Q. Were you the crime scene officer that went to  
4 the Auto Zone?

5 A. No, sir.

6 Q. There was another detective that went there to  
7 process that scene?

8 A. Yes, sir.

9 Q. Where did you get called out to to process  
10 that truck?

11 A. I got called out to the 7300 block of Spencer,  
12 located in Pasadena.

13 Q. And what is at that location?

14 A. There's a grocery store, an Albertson's, and a  
15 little strip center in that hundred block.

16 Q. And who was there when you got there to the  
17 scene?

18 A. Officer Gunther.

19 Q. Were there any civilians around?

20 A. No, sir.

21 Q. Did you later come to know that that truck  
22 belonged to an Auto Zone employee named Jeanne Hawkinson?

23 A. Yes, sir, I did.

24 Q. While you were out there, did you take  
25 photographs of that car while you were out there?

1 A. Yes, sir, I did.

2 MR. WIRSKYE: May I approach, Your Honor?

3 THE COURT: You may.

4 Q. (By Mr. Wirskye) Detective, let me show you a  
5 series of photographs marked for identification as State's  
6 1015 through 1023. Are these the photographs of the car and  
7 the scene that you processed that night?

8 A. Yes, sir, they are.

9 MR. WIRSKYE: Judge, we offer 1015  
10 through 1023.

11 MS. BUSBEE: No objection, Your Honor.

12 THE COURT: States 1015 through 1023  
13 shall be admitted.

14 Q. (By Mr. Wirskye) What type of stores are in  
15 this strip center?

16 A. In the strip center you have a Marble Slab, a  
17 nail polish or a nail place, and CiCi's Pizza.

18 Q. Where was the truck located?

19 A. It was located on the -- it was actually  
20 located between the Albertson's and the strip center, east  
21 of the Albertson's and west of the strip center.

22 Q. Let me show you State's 1015 and see if you  
23 recognize that.

24 A. Yes, sir.

25 Q. Okay. This is the truck, Ms. Hawkinson's

1 truck?

2 A. Yes, sir.

3 Q. What is this building?

4 A. That is the building where the Marble Slab,  
5 the strip center.

6 Q. What side is the Albertson's on?

7 A. It's to the left.

8 Q. This vehicle right here, what is that?

9 A. That's our Crime Scene Unit, our crime scene  
10 van.

11 Q. And State's 1016, what does that show?

12 A. That's the same truck with the strip center.  
13 It's just a different angle, showing southbound.

14 Q. And when you rolled up to process that scene  
15 and talk with the officer who was there, walk us through  
16 exactly what you did to process that truck.

17 A. Um, upon arrival I contacted Officer Gunther  
18 who is parked actually to the right of my truck. He told me  
19 that he would fill me in with the details, that the vehicle  
20 had been taken during a robbery and there was two pieces of  
21 items that he wanted me to pay close attention to because  
22 the owner of the vehicle who had found the truck had told  
23 them that those weren't hers.

24 Q. And what were those two items?

25 A. In particular, it was two earpieces that go to

1 a little radio, handheld radios.

2 Q. Did you see those when you examined the truck?

3 A. Yes, I did.

4 Q. Where were they located?

5 A. The first one was located hanging out of the  
6 driver's side door.

7 Q. Let me show you State's 1017. Is that it?

8 A. Yes, sir. And the second one was in the bed  
9 of the truck.

10 Q. I'll show you State's 1021. What do we see in  
11 State's 1021?

12 A. That's that earpiece that goes to the radio.

13 Q. Okay. And State's 1023, is that just a closer  
14 shot of the --

15 A. Yes. It's just a different angle.

16 Q. So you had two earpieces, one in the driver's  
17 door and one in the bed; is that right?

18 A. Yes, sir.

19 Q. What did you do when you saw those two pieces  
20 of evidence?

21 A. I photographed them and then after I had  
22 completed taking all my photographs, I collected them. The  
23 first one was -- I took a bag with me and collected it and  
24 labeled the bag as ID-1 and where I recovered the piece  
25 from.

1 Q. What is the significance of ID-1?

2 A. It shows each particular piece of evidence, so  
3 that way you don't get them confused as mistakenly saying  
4 this one was actually in the bed of the truck when it was  
5 actually hanging out the door.

6 Q. So the one hanging out the driver's door was  
7 labeled ID-1?

8 A. Yes.

9 Q. And what we see up on the screen --

10 A. Is ID-2.

11 Q. -- ID-2 from the truck bed?

12 A. Yes, sir.

13 Q. Did you do anything else with that evidence  
14 after you collected it?

15 A. Um, I sealed it up and submitted it or placed  
16 it into the property room, so it could be secured.

17 Q. And you brought some evidence with you when  
18 you came up from Pasadena; is that correct?

19 A. Yes, sir.

20 Q. Let me show you two pieces of evidence. The  
21 first has been marked State's 1030, and ask you to look at  
22 that and see if you can identify it.

23 A. Yes.

24 Q. And that's the earpiece from the driver's side  
25 door?

1 A. Yes, sir.

2 Q. And also 1031 and ask you to look at that and  
3 I kind of want to focus on that piece of evidence. Would  
4 you pull it out and show it to the members of the jury?

5 A. [Witness complies.]

6 Q. And that's ID-2 from the bed of the truck?

7 A. Yes, sir. I labeled the bag accordingly.

8 Q. And these bags have your markings that show  
9 exactly where you found them?

10 A. Yes, sir.

11 Q. What do you do with evidence once you pick it  
12 up at the crime scene like that? Where do you keep it in  
13 the police station?

14 A. We have got a property room where all the  
15 evidence is secured. There's only three people that have  
16 access to that property room, which are the property room  
17 officers and our supervisor.

18 Q. And that's what you did with this property  
19 that evening?

20 A. Yes, sir.

21 Q. Did that end your involvement in investigating  
22 that Auto Zone robbery?

23 A. Yes, sir.

24 Q. Who was the lead detective that was assigned  
25 to that case?

1 A. That would be Detective Sergeant Bonsal.

2 Q. And he's out in the hall ready to testify  
3 next; is that right?

4 A. Yes, sir.

5 MR. WIRSKYE: Judge, I offer 1030 and  
6 1031.

7 MS. BUSBEE: No objection, Your Honor.

8 THE COURT: Nos. 1030 and 1031 shall be  
9 admitted.

10 MR. WIRSKYE: I'll pass the witness.

11 MS. BUSBEE: No questions, Your Honor.

12 THE COURT: Thank you, Officer. You may  
13 stand down.

14 KURT BONSAI,  
15 having been duly sworn, was examined and testified as  
16 follows:

17 DIRECT EXAMINATION

18 BY MR. WIRSKYE:

19 Q. Detective, could you tell us your full name  
20 and spell your last name, please.

21 A. My name is Kurt W. Bonsal. It's B-O-N-S-A-L.

22 Q. And you are a police officer with the City of  
23 Pasadena, Texas?

24 A. Yes, sir, I am.

25 Q. How big is Pasadena?

1 A. Population is about 150,000, roughly.

2 Q. And where is it located?

3 A. Southeast of Harris County, next to the city  
4 limits of Houston.

5 Q. You were within Harris County?

6 A. Yes, sir.

7 Q. How long have you been a police officer there?

8 A. A little over 16 years.

9 Q. Where are you currently assigned?

10 A. I'm a Supervisor in the Detective Division.

11 Q. And how long have you had that assignment?

12 A. About five years.

13 Q. Let me direct your attention back to December  
14 of 2000. Were you the lead detective on an Auto Zone  
15 robbery that happened in your city?

16 A. Yes, sir, I was.

17 Q. Did you actually make it out to the scene that  
18 night?

19 A. No, I did not.

20 Q. When was your first involvement in the case?

21 A. The day after.

22 Q. And what did that consist of?

23 A. The case was assigned to me to conduct the  
24 follow-up investigation. I reviewed the police reports that  
25 were submitted.



1 Q. Once you reviewed the reports from that  
2 evening, did anything strike you or stand out in your mind  
3 with respect to the way the robbery was committed?

4 A. Yes.

5 Q. And what were those things?

6 A. The revolvers were used, multiple suspects,  
7 and the take-over-type robbery, along with one of the  
8 complainant's vehicles being taken.

9 Q. In your mind why was it unusual that these  
10 people used revolvers?

11 A. I'm the robbery squad supervisor and have been  
12 for some time and we don't have a lot of robberies where  
13 revolvers are used. It's an old weapon for a lot of people  
14 now. And I've been aware of a newspaper report of revolvers  
15 being stolen from TDC.

16 Q. So in your mind you instantly thought this may  
17 be connected to the Connally Unit prison break?

18 A. Yes, sir.

19 Q. At this point how many people did you think  
20 were involved in the robbery? How many individuals?

21 A. At that point I knew of three that had been  
22 inside the business, yeah, three.

23 Q. Did you think the participants were just  
24 limited to those three?

25 A. No, sir.

1 Q. Why not?

2 A. There was radios used and communication was  
3 being conducted over small, handheld radios.

4 Q. What physical evidence was collected from that  
5 Auto Zone, the actual store?

6 A. From the actual store there was some duct tape  
7 that was recovered, along with an earpiece from a radio and  
8 a battery holder out of a radio.

9 Q. And from the truck that was recovered, what  
10 did you have?

11 A. Out of the truck it was two earpieces. One  
12 was recovered from the bed of the truck and one from the  
13 door, hanging out of the door, and I believe a piece of  
14 tissue.

15 Q. With respect to your follow-up investigation  
16 from that point, did you contact the prison system?

17 A. Yes, sir, I did.

18 Q. And you made them aware of your robbery?

19 A. Yes, sir.

20 Q. Did you receive photographs of the individuals  
21 involved in the robbery?

22 A. Yes, sir, I did.

23 Q. Did you show lineups to your witnesses?

24 A. Yes, I did.

25 Q. Did you ever have any positive identifications

1 in your lineups?

2 A. No positive identifications.

3 Q. To what do you attribute that?

4 A. I believe the photographs were old.

5 Q. At some point as your investigation went on,  
6 were you made aware of a robbery up here in Irving, Texas,  
7 of an Oshman's?

8 A. Yes, sir.

9 Q. Did you see any similarities between that  
10 robbery and the robbery that you were working at Auto Zone?

11 A. Yes.

12 Q. And what was that?

13 A. The number of people, the radios, the  
14 take-over, and also I believe the vehicle taken from one of  
15 the complainants.

16 Q. And that is exactly what you had at Auto Zone?

17 A. Yes, sir.

18 Q. Once you heard about the Oshman's robberies,  
19 what did you do?

20 A. I contacted the Fugitive Unit at the  
21 Department of Public Safety.

22 Q. Why did you contact them?

23 A. The -- my understanding, they were involved in  
24 the -- part of the investigation.

25 Q. Did you ever turn any evidence over to the

1 Department of Public Safety?

2 A. Yes, I did.

3 Q. And what -- specifically, what items of  
4 evidence did you turn over to the DPS?

5 A. The earpieces that were recovered from the  
6 vehicle that had belonged to the complainant.

7 Q. Okay.

8 MR. WIRSKYE: Your Honor, may I approach?

9 THE COURT: You may.

10 Q. (By Mr. Wirsky) Detective Bonsal, let me  
11 show you two pieces of evidence, first State's 1030. See if  
12 you can tell if that's the evidence that you turned over to  
13 DPS?

14 A. Yes, it is.

15 Q. And that's ID-1 from the driver's side door?

16 A. Yes.

17 Q. And more importantly I'll have you look at  
18 State's 1031, ID-2, is that the earpiece from the bed of the  
19 pickup truck?

20 A. Yes.

21 Q. And that was also turned over to DPS?

22 A. Yes, sir, it was.

23 Q. Was that for the purpose of any DNA testing on  
24 those earpieces?

25 A. Yes, sir.

1 Q. Did you come to know that the Department of  
2 Public Safety Lab was able to get a DNA profile off those  
3 earpieces?

4 A. Yes, sir.

5 Q. And they subsequently returned those pieces of  
6 evidence to your office and you brought them with you to  
7 court today; is that right?

8 A. Yes, sir, that's correct.

9 Q. Based on your investigation, you believe that  
10 the inmates involved in the prison breakout were responsible  
11 for your Auto Zone robbery?

12 A. Yes, sir, that's correct.

13 MR. WIRSKYE: I'll pass the witness.

14 CROSS-EXAMINATION

15 BY MS. BUSBEE:

16 Q. Just one question. How many earpieces did you  
17 recover?

18 A. Um, I believe there were two recovered from  
19 the vehicle and a piece of an earpiece was recovered inside  
20 the store.

21 Q. Did you turn that over for DNA testing?

22 A. I don't know if that one was or not.

23 Q. Did you find pieces of a radio in the store?

24 A. Yes.

25 Q. What do you did with that?

1 A. The radio was still -- the pieces of the radio  
2 is still in evidence.

3 Q. Okay. And do you know if any testing was done  
4 on that?

5 A. No.

6 Q. Were any fingerprints taken?

7 A. They were processed for fingerprints, yes,  
8 ma'am.

9 Q. Do you know the results of those fingerprint  
10 examinations?

11 A. No matches.

12 Q. Okay.

13 MS. BUSBEE: I have no more questions,  
14 Your Honor.

15 REDIRECT EXAMINATION

16 BY MR. WIRSKYE:

17 Q. One question, Detective. Let me show you this  
18 photograph. I believe you took State's 612; is that  
19 correct?

20 A. Yes, I took this photograph.

21 Q. I guess we see some battery cartridges in that  
22 photograph?

23 A. Yes, sir.

24 Q. I'll take it back and put it up on the screen.  
25 One of the battery cartridges was actually recovered from

1 the Auto Zone; is that correct?

2 A. Yes, sir, that's correct.

3 Q. We see that on the screen?

4 A. Yes, sir.

5 Q. And you were able to actually match it back to  
6 a Radio Shack radio; is that correct?

7 A. Yes, sir, that's correct.

8 Q. Because of the cartridge battery cases are  
9 similar or the same?

10 A. Yes, sir.

11 MR. WIRSKYE: I'll pass the witness.

12 MS. BUSBEE: I have no more questions,  
13 Your Honor.

14 THE COURT: Thank you, Detective.

15 MR. WIRSKYE: May we approach, Your  
16 Honor?

17 THE COURT: You may.

18 (Bench conference)

19 THE COURT: Members of the jury, it's now  
20 4:00 and we can't get all the -- I'm not going to go to the  
21 next witness today. That's what we're having a conference  
22 about. Unlike what you see on TV, you don't have the two or  
23 three commercial breaks between witnesses. There's a lot  
24 that goes into scheduling.

25 As I said, I'm not going to waste your

1 time. We don't need you back until 10:30 tomorrow morning,  
2 10:30. That way we won't have you back here waiting. We'll  
3 have you back tomorrow morning at 10:30 a.m. ready for  
4 trial.

5 All the previous instructions that I have  
6 given you still apply. I'm going to go through them again.  
7 I know you get tired of it. No media from any source,  
8 radio, Internet, TV, newspaper, friends, you know, anything.  
9 Don't discuss it. Avoid it like the plague. Everything you  
10 need to learn about this case comes from where? The witness  
11 stand. A few more days to go.

12 So, if you would, please recess with the  
13 Sheriff and be back here tomorrow morning ready to go to  
14 work at 10:30.

15 [Jury out]

16 [End of Volume]  
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1 STATE OF TEXAS \*

2 COUNTY OF DALLAS \*

3 I, NANCY BREWER, Official Court Reporter for the 283rd  
4 Judicial District Court, do hereby certify that the above  
5 and foregoing constitutes a true and correct transcription  
6 of all portions of evidence and other proceedings requested  
7 in writing by counsel for the parties to be included in this  
8 volume of the Reporter's Record, in the above-styled and  
9 numbered cause, all of which occurred in open court or in  
10 chambers and were reported by me.

11 WITNESS MY OFFICIAL HAND on this the 4 day of

12 March, 2004.

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